



# Community Housing Development Organization (CHDO)

## Guidebook

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# COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS (CHDO)

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## HOME PROGRAM REQUIREMENTS

ADFA is committed to support and build capacity in ADFA-approved Community Housing Development Organizations (CHDOs) that have capacity and agree to develop quality affordable housing throughout the State of Arkansas. A CHDO is intended to respond to a specific community's needs. ADFA continues to encourage qualified nonprofit organizations to apply for certification as a CHDO.

## CHDO SET-ASIDE REQUIREMENT

ADFA will reserve not less than fifteen percent (15%) of the HOME allocation for investment only in affordable housing developed, owned or sponsored by CHDOs, its subsidiary or a partnership of which the CHDO or its subsidiary is the managing general partnership. In order to be eligible for the set-aside, the CHDO must have effective project control acting in any of the specified capacities.

- **A Community Housing Development Organization (CHDO)** is a private nonprofit, community-based service organization that has obtained or intends to obtain staff with the capacity to **develop** affordable housing for the community it serves.
- ADFA sets aside **a minimum of 15 percent** of their HOME allocations for housing development activities in which qualified CHDOs are the owners, developers and/or sponsors of the housing. ADFA must have a reasonable expectation of specific projects going forward.
- ADFA requires qualified CHDOs to apply for CHDO set-aside funds once every 2 years. In the event that a CHDO fails to meet this requirement, ADFA will not recertify the organization as a CHDO.
- HOME 2013 Rule requires ADFA to certify each CHDO at the point they commit HOME funds to a CHDO set-aside funded project. The certification review is project specific and compares the capacity requirements for the proposed project to the CHDO's current capacity in terms of both technical and financial strength.

## Commitment of Set-Aside of Funds for CHDOs

ADFA has up to 24 months from the date HUD notifies ADFA that HUD has signed the HOME Investment Partnership Agreement transmittal letter to identify and designate the CHDOs they plan to work with and to commit monies for the CHDOs' use.

1. DFA may set aside **more** than 15 percent of their funds for housing owned, developed or sponsored by CHDOs.
2. CHDOs may engage in other HOME-eligible activities in which they are not the owners, developers or sponsors of the housing. However, the HOME funds committed to those activities will not count toward the set-aside and ADFA may not fund such activities unless the CHDO is also developing units of affordable housing.
3. The CHDO commitment of funds cannot be made by ADFA **before** specific projects are identified.

## CHDO QUALIFYING CRITERIA

To qualify for the CHDO set-aside, ADFA must certify a nonprofit agency as a CHDO **each time** it commits funds to that organization for a specific project. ADFA accepts applications for CHDO set-aside on a continuous basis. The requirements for certification are discussed in this section of the manual.

HUD Notice CPD 97-11 details these requirements.

A CHDO is a specific type of private nonprofit entity. CHDOs must meet certain requirements pertaining to their:

- Legal status;
- Organizational structure; and
- Capacity and experience.

### Legal Status

1. **Organized under State/local law.**

CHDOs must be organized under State and local law.

2. **Purpose of organization.**

Provision of decent housing that is affordable to low- and moderate-income persons must be among the purposes of the organization. This commitment must be evidenced in the CHDO's:

- Charter;
- Articles of incorporation;
- By-laws; or
- A resolution of the CHDO's board of directors.

3. **No individual benefit.**

No part of the CHDO's earnings (profits) may benefit any members, founders, contributors or individuals.

4. **Clearly defined service area.**

A CHDO should have a clearly defined **geographic** service area. CHDOs do not need to represent a single neighborhood.

- For urban areas, a CHDO may include in its service area a neighborhood or neighborhoods, city, county, or metropolitan area.
- For rural areas, a CHDO may include in its service area a neighborhood or neighborhoods, town, village, county or multi-county area (but not the entire State.)
- Nonprofits serving special populations **must also** define the geographic boundaries of their service areas in order to qualify as CHDOs.

5. **Nonprofit status.**

A CHDO must have received a tax-exempt ruling from the IRS under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986 in order to be designated by the PJ as a CHDO.

**A.** IRS standards for granting a 501(c)(3) or (4) designation for housing development organizations are narrowly applied, lengthening the time it can take to receive a 501(c)(3) or (4) designation.

- Designation can take nine to 24 months.
- The time frame varies by IRS region.

6. **Conditional designation:**

The IRS will usually grant new applicants a **conditional** designation of 501(c) status, valid for a specified period of time (usually three years.)

- During that period of time, the organizations may operate legally as 501(c) organizations, with **all** benefits pursuant to that designation, while the IRS monitors their operations.

7. **Final designation:**

Assuming they operate in compliance with applicable regulations during this period, the IRS will grant them **final** 501(c) designation.

- The ADFA requirement for a 501(c) designation can **only** be fulfilled by having a **final** designation from the IRS.

**PENDING 501(C) STATUS**

Remember, documentation that the CHDO has an application for 501(c) status **pending** at the IRS will **not** suffice to fulfill the nonprofit status requirement.

## Organizational Structure

The CHDO is intended to respond to a particular community's needs. Therefore, the structure of the board of directors of a CHDO is viewed as the main indicator of community control over the CHDO.

1. The CHDO board must be composed as follows:

- At least one-third must be representatives of the low-income community.
- No more than one-third may be public officials or employees of the PJ or State Recipient.
- The balance is unrestricted and may include people such as human and social service providers, lenders, individuals with access to philanthropic resources, or others willing to contribute their professional expertise.

2. There are also maximum limits on representation and control by a for-profit entity when the CHDO is sponsored by a for-profit entity.

3. A governmental entity may create a CHDO, but the CHDO cannot be controlled by the governmental entity.

**A. Low-income community representation.**

As noted above, a **minimum** of one-third of the board must consist of representatives of the low-income community. The final rule provides that the requirement may alternatively be fulfilled by designees of certain nonprofit organizations serving on the board.

There are three ways to meet this requirement:

1. Residents of low-income neighborhoods in the community

- Low-income neighborhoods are defined as neighborhoods where 51 percent or more of the residents are low-income.
- Residents of low-income neighborhoods on CHDO boards do **not** have to be low-income themselves. **and/or**

2. Low-income residents of the community

- In urban areas, "community" is not necessarily limited to a single neighborhood, but may include several neighborhoods, the city, county or metropolitan area.
- In rural areas, "community" may also cover a multi-county area (but not the whole state). The board need **not** include low-income residents from each county in the multi-county area.

- Low-income residents of low-income neighborhoods in the community **do not** need to submit proof of their income.
  - If low-income residents of the community who do not live in low-income neighborhoods are necessary to meet this threshold, the CHDO must obtain a certification from the resident that the resident does qualify as low-income. **and/or**
3. Elected representatives of low-income neighborhood organizations
- A **low-income neighborhood organization** is an organization composed primarily of residents of a low-income neighborhood.
  - The primary purpose of the organization must be to serve the interests of the neighborhood residents.
  - Block groups, town watch organizations, civic associations, neighborhood church groups and NeighborWorks® organizations can be examples of low-income neighborhood organizations.
  - The governing body of the low-income neighborhood organization may elect the representative(s) to serve on the CHDO board.

#### **B. Low-income input.**

Input from the low-income community is not met solely by having low-income representation on the board.

1. The CHDO must also provide a formal process for low-income program beneficiaries to advise the CHDO on design, location of sites, development and management of affordable housing. The process must be described **in writing** and must be included in the organization's by-laws or a board resolution.
2. This requirement is especially important for CHDOs serving a large geographic area, where it may not be possible for a CHDO to have low-income board representation from every neighborhood in which the CHDO will develop, own or sponsor housing.
3. CHDOs should establish systems for community involvement in parts of their service areas where housing will be developed, but which are not represented on their boards. Such systems might include special committees of neighbors of a proposed development site, neighborhood advisory councils or open town meetings.

#### **C. Public-sector limits.**

A **maximum** of one-third of the governing board may consist of representatives of the public sector.

4. This limitation is intended to ensure that separation exists between PJs and CHDOs, and that CHDOs are indeed community-based and community-controlled organizations.
5. A member of the governing board of a CHDO would be considered a representative of the public sector if he or she is a public official, including:
  - Elected officials of the State of Arkansas – council members, aldermen, commissioners, state legislators, members of a school board, etc.
  - Appointed public officials – members of a board or State commission or of any other regulatory and/or advisory boards or commissions that are appointed by the State.
  - Public employees of the State – all employees of public agencies (including the schools) or departments of the State government (e.g., a clerk in the water and sewer department, a public facility janitor or a secretary in the tax assessment office); or



- Appointed by a State official – any individual who is not necessarily a public official, but who has been appointed by a State official (as described above) to serve on the CHDO board

Members of the board appointed by public officials cannot select other members of the board.

What if the public official is low-income? Public officials and/or appointees who themselves are either low-income community residents or residents of a low-income neighborhood count against the one-third maximum limit of **public sector** representatives. However, they do not count toward the one-third minimum requirement of community representatives.

*Example: Alderman Robert “Big Bob” Jones creates a nonprofit with a nine-member board to be a CHDO for his ward. The alderman appoints himself and two good friends to the board. At that point, three members of the board are considered to be representatives of the public sector. This means that the nonprofit has reached the one-third maximum limit for public officials and appointees. “Big Bob” realizes that he cannot appoint any other members to the board, but he still wants to have control over a majority of the board members. “Big Bob” designates his two good friends to select at least two other board members. A public official has directly or indirectly appointed five out of the nine members of the board, so Big Bob’s nonprofit would **not** qualify to be a CHDO.*

*Example: Truetown Neighbors Together (TNT), Inc., wants to qualify as a CHDO. The group fulfills every other requirement and is now at the point of reviewing its board composition for compliance with CHDO requirements. TNT has long been proud of its measure of neighborhood control, because six of the 12 members of its board reside in Truetown, a low-income neighborhood. However, included in the six are: the neighborhood’s alderwoman, a member of the school board and a neighborhood resident appointed by the mayor to serve on the city’s planning and zoning commission. The other six members are neither low-income nor public officials/appointees. The current TNT board does not exceed the one-third maximum limit on public-sector representatives, since only three out of 12 members are public officials/appointees. However, the three public officials/ appointees, even though they live in the low-income neighborhood, cannot count toward the minimum one-third community representative requirement. Therefore, TNT’s board does not currently meet that threshold requirement.*

**D. PJs, public bodies or instrumentalities.** PJs, public bodies or instrumentalities of public bodies cannot be considered CHDOs. Examples of instrumentalities of public bodies include public housing authorities (PHAs), urban renewal agencies, redevelopment authorities and downtown development authorities.

- A governmental entity may create a CHDO, and while officers and employees of the governmental entity can serve as Board members to the CHDO (subject to the one-third appointment limitation), they cannot serve as officers or employees of the CHDO. The CHDO cannot be controlled by the governmental entity.
- These limits on public-sector representation on CHDO boards **only** serve to define CHDOs. There are other (not specific to HOME) restrictions on the participation of public officials on the boards of nonprofit organizations seeking public funds. PJs should observe their conflict-of-interest guidelines in this regard as well.

**E. Sponsored CHDOs.** Nonprofits that have been sponsored by other nonprofits, charities, religious organizations, local or state government, public agencies, HFAs, redevelopment authorities or for-profit corporations **may** qualify as CHDOs, but certain additional requirements and board limitations can apply.

1. Nonprofit and charity sponsors:

- There are no limits on the proportion of the board that may be appointed by nonprofit or charity sponsors, as long as the minimum one-third community representation is met, and the maximum one-third public representation is not exceeded.
- A one-year minimum history of service to the community by the **sponsoring nonprofit or charity** may help a new nonprofit to qualify as a CHDO.

2. Religious organization sponsors:

- Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Government entities are not to discriminate against an organization on the basis of the organization's religious character or affiliation.
- However, organizations directly funded under HOME may not engage in inherently religious activities. If the organization conducts such activities, they must be offered separately, and participation must be voluntary for the beneficiaries of the assistance provided. Additional guidance regarding religious or faith-based organizations is provided in 24 CFR 5.109 (Equal Participation of Religious Organizations).

3. Local/state government and public agency sponsors:

- A local or state government and/or a public agency cannot qualify as a CHDO but may sponsor the creation of CHDOs.
- Government officials and appointees of the government cannot exceed one-third of the members of the board.
- The officials and employees of the governmental entity cannot be officers or employees of the CHDO.
- All other CHDO rules and requirements also apply.

4. For-profit corporate sponsors:

- A CHDO cannot be controlled by, nor be under the direction of, for-profit entities or individuals seeking profit from the organization.

5. CHDOs may be sponsored or organized by a for-profit if:

- The primary purpose of the for-profit sponsor is not the development or management of housing (that is, a builder, developer or real estate management firm may not spin off a CHDO);
- The for-profit appoints no more than one-third of the CHDO's governing board and the board members appointed by the for-profit do not appoint the remaining members of the board; and
- The officers and employees of the for-profit entity cannot be officers or employees of the CHDO. The CHDO is free to contract for goods and services from any vendors it selects.

## Capacity and Experience

**A. CHDO experience.** A CHDO must also demonstrate that it has at least **one year** of experience serving the community where it intends to develop the HOME-assisted housing.

1. Newly created organizations wishing to become CHDOs can meet this requirement if the parent (or sponsoring) organization is a nonprofit and has provided services to the community for at least one year. The final rule also states that CHDOs may share developer responsibilities with private, non-CHDO partners, provided that the CHDO remains "in charge" of all aspects of the development process.

The year of service does **not** have to be directly related to housing.

*Example: The United Way of Hometown creates a new nonprofit corporation to develop single-family homes for homebuyers. Although the nonprofit is new, the United Way of Hometown was chartered 50 years ago and has considerable low-income community experience. By sponsoring the creation of the new nonprofit, the United Way has fulfilled this requirement.*

2. Prior service to the community cannot consist of a for-profit organization's work in that community.

**B. CHDO capacity.** CHDOs must demonstrate the capacity of their key staff to carry out the HOME-assisted activities they are planning. This means that CHDOs must have:

**Paid** employees with housing experience appropriate to the role the nonprofit expects to play in projects (i.e., owner, developer, or sponsor).

- An organization that will undertake development activities must demonstrate development capacity.
- An organization that will undertake property ownership and management must demonstrate ownership/management experience.
- For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience to train appropriate key staff of the organization.
- Consultants or volunteers can fill occasional skill gaps or undertake activities that are required only on a **periodic** basis but cannot be the basis of a determination that a nonprofit has the capacity to be designated as a CHDO.

The final rule states that CHDOs may demonstrate their capacity based on experience with programs other than HOME—such as Low-Income Housing Tax Credits or the Federal Home Loan Bank Affordable Housing Program. Additionally, the final rule states that the experience of paid employees may be supplemented by board members or officers who are volunteers.

**Differences in required experience and capacity.** There are significant differences in the type of experience and capacity that is required to carry out the variety of housing development activities eligible under the HOME program. Therefore, “experience in having completed similar projects” is different for development/management of rental housing and development/sale of housing for homebuyers.

*Example: The Cranberry Orchard Neighborhood Development Organization (CONDO) has successfully developed more than 100 units of housing for homebuyers by acquiring, rehabbing and re-selling existing single-family homes. CONDO plans to use a similar stock of single-family homes for a scattered-site, 30-unit rental housing development, which it will own and manage. This is CONDO's first experience in rental housing development. During the recertification of CONDO, prior to commitment of HOME funds, CONDO will have to demonstrate that key staff has the appropriate experience and capacity to carry out the HOME-assisted activity they are proposing.*

A. CHDOs must have their own **paid** professional staff. This means that the key staff required to demonstrate CHDO capacity **cannot** be:

- Municipal, county or state employees
- Officers or employees of a for-profit sponsoring entity
- Employees of another non-profit organization
- Consultants (paid or volunteer) not planning to train the CHDO's key staff.

B. CHDOs must maintain certification throughout the project affordability period. ADFA will continue to

monitor the status of CHDOs during the affordability period to ensure compliance.

## Financial and Accounting Systems

**A. Financial standards.** CHDOs must have financial accountability standards that conform to 2 SFR 200.302 Financial Management and 2 CFR 200.303 Internal Controls.

1. If a CHDO or nonprofit is in the role of a subrecipient, it must comply with certain provisions of 2 SFR Part 200.
2. If a CHDO is acting as an owner, sponsor, or developer of HUD HOME assisted housing, the requirements at 2 CFR 200.302 and 200.303, "Standards for Financial Management Systems" apply.
3. This means the CHDO must relate financial data to performance data and develop unit cost information. The systems include the following:
  - Accurate, current, and complete financial results;
  - Records that identify the sources and uses of the funds;
  - Control over and accountability of all funds and assets;
  - Comparison of actual expenditures against budgets;
  - Written procedures to minimize time between the transfer of funds in and the payment of funds out;
  - Written procedures for determining reasonableness, allocability, and allowability of costs; and
  - Accounting records including cost accounting records supported by sources documents.

**B. Accounting systems.** CHDOs/Nonprofits should establish accounting systems that include at a minimum the following report:

1. Chart of accounts that includes:
  - The categories of accounts
  - The name of the account
  - The number of the account
  - Cash receipts journal that includes:
    - The date the funds were received listed in chronological order;
    - The amount received;
    - The source of the funds; and
    - The purpose of the funds.
  - Cash disbursements journal that includes:
    - The date funds were paid out listed in chronological order;
    - The date the expense was incurred;
    - The purpose of the expense;
    - The amount paid; and
    - To whom it was paid.
  - Payroll journal that includes:
    - A listing of employees;
    - Amounts paid to the employees; and

- Benefit expenses paid.
  - General ledger that includes:
    - A summary of all account activities listed in chronological order; and
    - The financial status of all the accounts of the organization.
2. **Source documentation.** Costs charged against the HOME program must be supported by source documentation that shows that the costs were:
- Incurred during the effective period of the agreement;
  - Actually paid out;
  - Expended on eligible items and activities; and
  - Approved by the appropriate officials of the organization.

## CHDO SET-ASIDE ROLES: OWNER, DEVELOPER AND SPONSOR

ADFA provides CHDO set-aside funds to CHDOs acting as owners, developers and sponsors of projects that create new units of affordable housing in their communities. To qualify for the set-aside funds, the CHDO must have effective project control (decision making authority.)

1. CHDO set-aside funds may be used by CHDOs for those HOME activities where the CHDO acts as the developer, sponsor and/or owner of the housing.

A. **Owner.** The CHDO as an “**owner**” is required to own (in fee simple absolute or long-term ground lease) the multifamily or single-family housing that is to be rented to low-income families.

- The CHDO “**owner**” must own the HOME project during the development and throughout the period of affordability.
- The CHDO is required to oversee all aspects of the development process.
- The CHDO may hire a project manager or contract with a development contractor to oversee all aspects of the development.
- A CHDO is permitted to acquire housing that is in standard condition (and meets property standards at §92.251) provided it owns the housing throughout the affordability period.

B. **Developer.** A CHDO is a “**developer**” when it owns a property (in fee simple absolute or long-term ground lease) and develops a project.

- The CHDO is owner of the property must be in sole charge of all aspects of the development process, to include obtaining zoning, securing non-HOME funds, selecting contractors, overseeing the progress of the work, and determining the reasonableness of costs.
- The CHDO must own the development throughout both the development process and the affordability period.
- At project completion, the CHDO must maintain ownership of the HOME-assisted housing throughout the period affordability and manage the project over the period of affordability.

C. **Sponsor.** A CHDO is a “**sponsor**” for HOME-assisted rental according to the conditions outlined below:

- The CHDO “**sponsors**” a project when the property is “**owned**” or “**developed**” by:
- A subsidiary of the CHDO (in which case the subsidiary, which may be a for-profit or nonprofit organization, must be wholly owned by the CHDO);

- A limited partnership (in which the CHDO or its wholly owned subsidiary must be the sole general partner); or
- A limited liability company (in which the CHDO or its wholly owned subsidiary must be the sole managing member).
- The HOME funds are invested in the project must be provided to the entity that owns the project.
  - The CHDO “**sponsors**” a project when the CHDO owns and develops the housing and agrees to convey the housing to a private nonprofit organization (that does not need to be a CHDO but cannot be created by governmental entity) at a predetermined time after completion of the project development.
  - The CHDO is required to own the property before the development phase of the project.
  - The CHDO sponsor is required to select the nonprofit organization before entering into an agreement with ADFA that **commits** the HOME funds.
  - The other nonprofit will assume from the CHDO at a specified time all HOME obligations (including repayment of loans and tenant and rent requirements) for the project. If the property is not transferred to the nonprofit organization, the CHDO sponsor will remain liable for all HOME obligations.
  - The CHDO sponsor must provide sufficient resources to the nonprofit organization to ensure the completion of development and long-term operation of the project.

*Example: A CHDO enters into a legally binding agreement with ElderCare, an existing nonprofit organization experienced in providing enhanced housing services for the elderly. The CHDO owns a vacant 50-unit property. The CHDO and ElderCare enter into an agreement for the CHDO to develop the 50-unit property and convey the property to ElderCare upon completion of the project. ElderCare will assume responsibility for the long-term management of the project, and for the fulfillment of all obligations and requirements associated with the use of the HOME funds.*

**For a HOME-assisted homebuyer’s 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 requirements, to a HOME-qualified homebuyer within a specified time frame.

- 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 sponsored nonprofit is required to sell (transfer) to a homebuyer the property, along with the HOME loan/grant obligations.
  - This sponsorship role could include a lease-purchase approach (for a period not to exceed three years) whereby the sponsored nonprofit would lease the property to a homebuyer for a period not to exceed two years. At the expiration of the lease, the sponsored nonprofits must sell or transfer the property, along with the HOME loan/grant obligations, to the homebuyer. If the property is not transferred, the sponsored nonprofit retains ownership, and all HOME rental requirements will apply.
1. The CHDO must always **own** the property prior to the development phase of the project.
  2. The Final Rule makes direct homeownership assistance to a homebuyer eligible for the set-aside, provided the assistance is used toward the purchase of a residence owned, developed, or sponsored by a CHDO using HOME assistance.

**For HOME-assisted homebuyer project:** The CHDO must serve as owner and developer. The CHDO is owner of the property must be in sole charge of all aspects of the development process, to include obtaining zoning, securing non-HOME funds, selecting contractors, overseeing the progress of the work, and determining the reasonableness of costs. The CHDO transfers title of the property and the HOME obligations to an eligible homebuyer within a specified time frame of project completion (not more than 9 months). The CHDO may provide direct homeownership assistance to a homebuyer when it sells the housing to low-income families. The written agreement with the CHDO must include the actual sales price or method for determining it, the disposition of proceeds of sale (return to PJ or permit CHDO to retain) and use of proceeds if the CHDO retains.

**Similar roles.** The **developer** and **sponsor** roles are similar in many ways.

1. In both the developer and sponsor roles, the CHDO carries all of the principal project development activities – such as, financing, construction management and putting together a capable development team – to bring a project from conception to completion.
2. As developer, the CHDO must own the property.
3. As sponsor, the CHDO may not own the property (however, must have effective project control) and shift the responsibility from the CHDO to another specific nonprofit at a predetermined time after the completion of the project.
4. The HOME long-term affordability requirements for the project are the responsibility of the owner or subsequent owners of the property.

#### **HOMEOWNERS CANNOT “HIRE” A CHDO**

An **existing homeowner** cannot “hire” a CHDO developer or sponsor to complete the rehabilitation (for example, select the contractor, construction management, etc.) of his/her residence.

### **CHDOs vs. Subrecipients**

1. A community-based nonprofit organization may meet all of the regulatory requirements to be designated as a CHDO. However, in order for CHDO activities to count toward the CHDO set-aside, the CHDO must be the **developer, sponsor and/or owner** of the HOME-assisted housing.
2. CHDO **as subrecipient.** CHDOs may play the role of a “subrecipient” undertaking all other HOME-eligible activities, even if these activities do not count toward the CHDO set-aside.
  - A HOME subrecipient is an entity selected by a PJ to administer aspects of a HOME program (that is, screen projects, market activities, review and certify tenant income, counsel potential homebuyers) or an entire HOME activity (review requests for HOME funds for the rental housing production set-aside.)

**Restrictions:** When a CHDO is acting in the capacity of a HOME subrecipient, it may **not** also receive HOME funds to develop, sponsor or own housing funded **through the subrecipient activity** the CHDO administers. Doing so would constitute a conflict-of interest for the CHDO.

*Example: Homeville has selected a qualified CHDO, Housing Now, to administer its \$570,000 rental production set-aside program. As per the terms of their HOME subrecipient agreement, Housing Now will have responsibility for reviewing proposals submitted for rental production set-aside loans and grants and making funding recommendations to Homeville. Housing Now may not serve as developer, sponsor or owner for any of the rental production set-aside monies it is involved in administering.*

*Example: The Tri-County Consortium has selected a qualified CHDO, Adams County*

*Housing Endeavors (ACHE), to administer its HOME program in areas of the Consortium **outside** of Adams County. Under the terms of their HOME subrecipient agreement, ACHE will solicit and review all proposals for HOME grants and loans for the consortium's homeownership and rental housing development activities. If adequate systems are in place to ensure that ACHE will not have influence over HOME funding decisions by the Consortium for projects in Adams County, ACHE may develop, sponsor or own HOME-assisted affordable housing **within** Adams County.*

## ELIGIBLE USES OF HOME FUNDS BY CHDOS

1. With ADFA approval, CHDOs may use HOME funds for **all ADFA** eligible HOME activities. However, only certain types of activities count toward the minimum 15 percent set-aside.
  - A. **Eligible:** Eligible set-aside activities include the following when carried out by a CHDO acting as an owner, sponsor or developer:
    - Acquisition and/or rehabilitation of rental housing;
    - New construction of rental housing;
    - Acquisition and/or rehabilitation of homebuyer properties;
    - New construction of homebuyer properties; and
    - Direct financial assistance to purchasers of HOME-assisted housing sponsored or developed by a CHDO with HOME funds. Direct assistance to low-income homebuyers can be no greater than 10% of HOME funds provided to the project in the form of development funding.
  - B. **Ineligible:** The following activities are ineligible ADFA CHDO activities:
    - Tenant-based rental assistance (TBRA).
    - Homeowner rehabilitation; and
    - Brokering or other real estate transactions.

## ELIGIBLE FORMS OF ASSISTANCE

1. ADFA provides all HOME assistance in the form of a loan which must be repaid to ADFA with the exception of mortgage subsidy assistance provided to the homebuyer.
2. The agreement between ADFA and the CHDO must specify the eligible activities to be performed that will benefit low-income persons or families.

## SPECIAL ASSISTANCE TO CHDOS

1. ADFA may choose to use HOME funds to provide special assistance to CHDOs. This assistance includes:
  - Operating assistance; and
  - Capacity-building assistance.
2. In contrast to the 15 percent (15%) set-aside, which is mandated, ADFA has total discretion over whether to provide these special forms of assistance.

**CHDOs in dual roles.** A CHDO that is also functioning as a subrecipient, or contractor is eligible to receive funding for administrative expenses (subject to the 10 percent cap) for project delivery costs related to non-set-aside activities.



## OPERATING ASSISTANCE

Up to five percent of ADFA's HOME allocation may be used to provide general operating assistance to CHDOs that are receiving set-aside funds for an activity (or activities) or are under a written agreement to receive set-aside funds within 24 months of the date of the agreement. Operating expenses are not an eligible cost for CHDO set-aside funds.

1. **Limitations.** ADFA's assistance for operating expenses is available in the following increments:

- The first allocation will be awarded in an amount not to exceed the lesser of \$50,000 or 50% of the CHDO's operating budget;
- The second allocation will be awarded in an amount not to exceed the lesser of \$30,000 or 50% of the CHDO's operating budget; and
- The third and final allocation will be awarded in an amount not to exceed the lesser of \$10,000 or 50% of the CHDO's operating budget.

ADFA operating assistance is unavailable to CHDOs for projects in Little Rock, North Little Rock Fort Smith, and Pine Bluff.

Funds awarded to the CHDO by ADFA for operating expenses (under 24 CFR Part 92.208) and funds provided to the CHDO by HUD through intermediaries for organizational support and housing education (under 24 CFR Part 92.302), count toward the \$50,000/50 percent cap (under 24 CFR 92.300(b)).

- The Final Rule provides that administrative funds awarded to a CHDO **as a** subrecipient do **not** count toward the \$50,000/50 percent cap.
- The ADFA written agreement will provide details on the specific eligible uses of these funds for each award.

1. Eligible uses. **Operating expenses** are reasonable and necessary costs for the operation of the CHDO, including:

- Salaries, wages, benefits and other employee compensation;
  - Employee education, training and travel;
  - Rent and utilities;
  - Communication costs;
  - Taxes and insurance; and
- Equipment, materials and supplies.

## PROGRAM DESIGN AND IMPLEMENTATION ISSUES

This section discusses the steps ADFA takes to select qualified CHDOs as well as ways ADFA may assist CHDOs in growing their capacity.

### SELECTING CHDOS

ADFA is actively seeking qualified nonprofit organizations interested in promoting the development of affordable housing opportunities in the State of Arkansas to become ADFA certified CHDOs. ADFA accepts requests for certifications on a continuous basis and may elect to seek out potential applicants.

A. **Three steps.** There are three steps to finding and qualifying the right nonprofit organizations to become CHDOs.

- **Step 1: *Identify*** the existing nonprofits in communities.
- **Step 2:** Determine whether the nonprofits are *eligible* based on HUD criteria.
- **Step 3:** Assess whether the nonprofits are *capable* of performing desired CHDO activities.

The steps are discussed below.

#### Step 1: Identify Potential CHDOs

A. To start the process of identifying and qualifying CHDOs, ADFA may do a number of things.

- Invite community development corporations (CDCs) and other nonprofits to an information session about the HOME program and CHDO provisions.
- Promote the benefits of CHDO designation, including:
  - I. Availability of a specific HOME set-aside for affordable housing activities; and
  - II. Use of HOME funds for operating expenses and pre-development costs.
- Meet individually with groups likely to be designated as CHDOs, or that ADFA will work with to obtain CHDO designation.

A list of the different types of organizations to contact regarding potential CHDOs is provided as Exhibit 8-1.

**EXHIBIT 8-1 Potential CHDO Contacts**

Existing CDBG subrecipients
Lending institution referrals
State housing finance agency referrals
State community development agencies
Community foundations/philanthropies
United Way and other community fund drives
Corporate foundations
National housing intermediary organizations, such as: <ul style="list-style-type: none"><li>– Neighborhood Reinvestment Corporation</li><li>– Local Initiatives Support Corporation</li><li>– Enterprise Foundation</li></ul>
National nonprofit associations, such as: <ul style="list-style-type: none"><li>– National Congress for Community Economic Development</li><li>– National Association of Community Action Agencies</li><li>– Housing Assistance Council</li></ul>
State-wide and local nonprofit agencies and service providers
National and local nonprofit advocacy organizations
Community land trusts

## Step 2: Determine Eligibility

- Once the CHDO candidates are identified, the candidates must complete and submit information on the “CHDO Checklist” contained in Notice CPD 97-11. This notice is included in the forms section of the manual.
- ADFA must determine whether organizations meet the CHDO qualifications outlined in the HOME regulations. (The eligibility criteria were discussed in Part 1 of this chapter.)

## Step 3: Assess CHDO Capability

- Once an organization has been determined eligible as a CHDO, ADFA must ascertain whether the CHDO is actually capable of carrying out the responsibilities of a CHDO.
1. **Assessing capacity.** There are a number of questions to ask when assessing an organization’s capacity. Asking these questions will help ADFA determine which organizations are qualified and capable of carrying out CHDO-eligible activities, and which ones need to make changes or build capacity to qualify.
    - A. Organizational issues:
      - What is the primary business of the organization?
      - Does the firm have a mission statement?
      - What is the composition of the board?
      - What is the relationship of the board to the staff?
      - How long has the organization been in operation?
      - How have the services or programs changed since the organization began?
      - Is there a current business plan?
    - B. Experience and capacity:
      - Does the nonprofit have the housing experience appropriate to the role the CHDO expects to play (owner, developer, sponsor)?
      - Has the nonprofit produced successful affordable housing projects?
      - What is the current status of projects funded in previous years?
      - Are affordable past rental projects still occupied by lower-income tenants? If not, why?
      - Are the past projects well-maintained?
      - Are tenants pleased with the project development and management?
    - C. Finance and accounting standards and procedures:
      - What is the current annual operating budget? How about the last three years?
      - Operating funds come from what sources?
      - Are these funding sources likely to continue?
      - Is the CHDO audited by a certified public accountant as evidenced by audit reports?
      - Is the organization financially solvent?
      - Who maintains the organization’s accounting records?
      - Are financial records maintained manually or is computer software used?
      - Does the organization have insurance?
    - D. Staffing issues:
      - Who is the director? What are his/her housing/development experience and capabilities?
      - How many paid staff members are there?

- Who are the staff members? What housing/development experience and capabilities do they have?
- What is the organizational structure?
- Is there a lot of staff turnover?
- Does the organization have staff training and evaluation procedures in place?

## BUILDING CHDO ELIGIBILITY AND CAPACITY

Based on the results of ADFA's search for qualified organizations and assessment of capacity and experience, ADFA may need to help particular nonprofits become eligible as CHDOs or develop greater capacity to carry out CHDO-eligible activities.

### NOTES OF CAUTION

ADFA must carefully avoid controlling the organizations they charter.

- Remember that ADFA may not assign staff to a CHDO on either a full or part-time basis in order to fulfill the CHDO's capacity requirements.
- CHDOs may not pay ADFA for any technical assistance and/or training the ADFA provides.

### Building Eligibility

- The following table specifies critical eligibility issues that may have to be addressed in order to qualify a nonprofit organization as a CHDO:

#### CHDO ELIGIBILITY CONSIDERATIONS

Does the organization have:	If not, encourage the nonprofit to:	But beware:
501 (c)(3) or (4) status?	Apply now to the IRS for 501(c)(3) or (4) status!	IRS tax rulings can take a year or more.
At least 1/3 low-income board representation; no more than 1/3 public officials? If a spin-off of a for-profit, no more than 1/3 from the sponsoring business?	Expand the board of directors or restructure the board.	Finding and training good board members takes time.
At least one year's experience serving the community?	Work for one year on other programs in the community.	PJs may have to support those efforts with other funds.
Commitment to housing?	Change their by-laws, charter or pass resolution.	The organization may look at its total activities and protect itself from liabilities.

## Building Capacity

- Eligibility is only part of the story. CHDOs must also have the capacity to undertake and complete projects within 12 months of the HOME project commitment.

**Existing CHDOs.** Building improved capacity within *existing* CHDOs requires a variety of approaches.

Examples may include:

- **Good business planning:** Just like emerging for-profit enterprises, nonprofits must develop and follow a sound business plan.
- **Sufficient capital:** Adequate capital to sustain the nonprofit's housing efforts and operating needs is essential.
- **Keen marketing/customer knowledge:** Nonprofit organizations, just like their for-profit counterparts, must know their markets and their customers.
- **Technical expertise:** Good business planning, customer knowledge and sufficient operating capital allow the nonprofit to get to the development stage. But the nonprofit must still "deliver the goods." This requires the appropriate skills and expertise.
- **Strong leadership and staffing:** Ultimately, it is the people – especially the leadership – within the organization that make the difference.

**New CHDOs.** There may also be a need to create new CHDOs to make use of the set-aside in future years. Creating new organizations to qualify as CHDOs makes sense where:

- No CHDOs exist;
- Potential groups don't want to get into bricks-and-mortar projects, which are the only types of projects eligible as CHDO activities; or
- Qualified groups do not have sufficient capacity to make prudent use of the set-aside funds.

**Starting a nonprofit.** ADFA may start a nonprofit that will qualify as a CHDO.

- This is an opportunity to create an organization structured especially to carry out HOME projects. However, as previously discussed, organizing a nonprofit is neither simple nor quick.
- Coming up with the requisite one-year experience can be problematic. However, during the time it takes to process the nonprofit's articles of incorporation and obtain an IRS ruling, the organization can begin to function in ways that count toward its service record.

## BUILDING LONG-TERM RELATIONSHIPS WITH CHDOS

1. **Building the capacity of the system.** ADFA can do a great deal to help CHDOs build their capacity. However, there are instances that ADFA will find that the need to build capacity exceeds their resources. For this reason, HUD provides technical assistance and training through consultants and national intermediaries.
- **Training:** HUD provides training on the provisions of the HOME program through a three-year contract with training consultants. This training will include topics of interest to CHDOs.
  - **Technical assistance:** HUD also administers a technical assistance program geared toward CHDO capacity-building. Through contracts with national, regional, state and local nonprofit housing intermediary organizations, HUD provides assistance on:

- **Organizational support:** to cover operational expenses, and expenses for training and legal, engineering and other forms of technical assistance that the CHDO staff, board or members may require;
  - **Housing education:** for CHDOs to provide or administer programs to educate, counsel, and/or organize tenants and homeowners eligible for HOME assistance;
  - **Program-wide support:** technical assistance, training and continuing support for CHDOs to manage and conserve property developed with HOME assistance;
  - **Benevolent loan funds:** technical assistance to increase local ability to attract private investment in benevolent (below-market) loan funds for affordable housing development;
  - **Facilitating women in home-building profession:** technical assistance to businesses, unions and organizations involved in rehabilitation and construction of housing in low/moderate income areas to help women residing in these areas obtain jobs involving such activities;
  - **Community development banks and credit unions:** technical assistance to help establish privately owned community financial institutions that can finance the development of affordable housing; and
  - **Developing community land trusts:** funds to community land trusts for organizational support, technical assistance, education, training and continuing support, or to community organizations to establish a community land trust.
2. **Establishing a shared vision.** To sustain a long-term, successful partnership, ADFA must have an understanding with each CHDO of their common goals and expectations. Some good steps to take:
    - Identify areas of common interest;
    - Establish shared goals;
    - Define roles; and
    - Clarify expectations – both short-term and long-term.
  3. **Monitoring partnership performance.** The process of reviewing and evaluating the performance of the partnership should be an ongoing one. This process will help to identify strengths and weaknesses in CHDO operations and the support systems necessary for CHDOs to operate and for the HOME program to succeed.
    - This information should be reviewed on an ongoing basis for the purposes of identifying what needs to be changed, and for securing the appropriate technical assistance and training needed to do so.
    - The level, type and areas of need will vary from CHDO to CHDO, and, within CHDOs, from year to year. By evaluating the performance of CHDOs over time, technical assistance and capacity-building will be fluid processes that remain relevant to the needs of the HOME program.
  4. **Evaluation:** An evaluation of CHDO performance may include a review of the following factors:
    - Completion of funded projects;
    - Timeliness and ability to complete projects within established budget parameters;
    - Human resources;
    - Adequate financial resources;
    - Ability to leverage other resources;
    - Adequate financial systems;
    - Board operations;
    - Strategic plans;

- Organizational work plans;
- Record-keeping;
- Compliance with HOME targeting requirements; and ☐ Board composition and operations.

## LIST OF ADFA FORMS

ADFA has all required CHDO forms on their website, <http://adfa.arkansas.gov>. These forms include:

1. CHDO Certification Application
2. CHDO Re certification Application

## Additional Resources and Links

ADFA recommended additional guidance and hyperlinks

1. HUD Exchange <https://www.hudexchange.info/programs/home/topics/chdo/#policy-guidance-and-faqs>
2. CHDO Survivor Kit <https://www.hudexchange.info/resource/2385/chdo-survivor-kit/>
3. CHDO Toolbox for HOME PJs <https://www.hudexchange.info/resource/2386/chdo-toolbox-for-home-pjs/>
4. CHDO Opportunities in HOME – Introduction <https://www.youtube.com/watch?v=PoAGk-KP3RY>
5. CFR Code for Community Housing Development Organizations [24 CFR 92 Subpart G](#)
6. Eligible CHDO operating expenses and capacity building costs [24 CFR 92.208](#)
7. Set-aside for community housing development organizations [24 CFR 92.300](#)
8. Project-specific assistance to community housing development organizations [24 CFR 92.301](#)