HOME PROGRAM

CHDO Guidelines



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# Background & Introduction

Wyoming Community Development Authority (WCDA), as a participating jurisdiction (PJ), is a recipient of HOME Investment Partnership Program (HOME) funds from the U.S. Department of Housing and Urban Development (HUD).

HOME is a federally funded program specifically designed to provide decent, safe, sanitary housing to low income individuals and families. HOME requires that each PJ set-aside at least 15% of its annual HOME allocation for community housing development organizations (CHDO) acting as the owner, developer, or sponsor affordable housing. *Certification* of an organization as a CHDO takes place in the context of a specific project to be funded from the CHDO set aside. PJs are required to certify that an organization meets the HOME program’s CHDO requirements each time the organization fund as a CHDO. Once funded, CHDOs are required to maintain their status as a CHDO throughout the development of the project and, in the case of rental housing, the affordability period.

The HOME Program also allows PJs to provide certain optional benefits to CHDOs. These include the ability to i) allow CHDOs to retain and reuse sales proceeds from homebuyer projects developed by the CHDO and ii) award operating assistance to CHDOs.

This policy is intended to outline key elements of, documentation requirements for, and factors influencing how WCDA will determine that an organization qualifies as a CHDO prior to committing funds.

The policy is organized in several parts including:

* **CHDO Threshold Requirements** related to regulatory requirements about an organization’s legal status, independence, board composition, and service area;
* **CHDO Staff Capacity Requirements** related the regulatory requirement that an organization “{have} paid employees with housing development experience.”
* **CHDO Roles** outlining regulatory criteria for a project to be classified as “owned, developed, or sponsored” by a CHDO
* **Additional Underwriting Considerations** related to a CHDO’s broader organizational capacity, including financial capacity.
* **Optional CHDO Benefits** addressing WCDA’s approach to the award of CHDO Operating funds or permission to retain and reuse CHDO Proceeds.

# CHDO Threshold Requirements

The HOME regulation, in §92.2, defines a CHDO as an independent nonprofit organization whose purpose includes providing affordable housing in a specified area or region. The definition includes a range of specific criteria an organization must meet to be designated as a CHDO (24 CFR §92.2).

At a high level, the criteria for CHDO designation can be grouped into four key elements. To be recognized as a CHDO, an organization must be:

* **A legally incorporated tax-exempt nonprofit organization, including that:**
* Organized under State/Local Law: The nonprofit organization must show their articles of incorporation as evidence of being organized under State of Alabama law.
* Purpose of Affordable Housing: Providing decent and affordable housing must be among the organization's purposes.
* No Individual Benefit: No part of the CHDO's earnings or profits may benefit any members, founders, contributors, or individuals.
* Control: The organization cannot be under the control of individuals or entities seeking to derive profit from the organization.
* IRS Nonprofit Status: Organizations must have a 501(c)(3) or 501(c)(4) nonprofit status of exemption letter of certification from the Internal Revenue Service (IRS).
* Private Entity: The organization cannot be a governmental entity.
* **Accountable to the low-income community it serves, including:**
	+ Service Area: The organization must have a clearly defined geographic service area. HUD does not allow statewide CHDOs.
	+ Low-Income Board Representation: At least 1/3 of the board must be qualified representatives of the low-income community (i.e. service area) served by the CHDO. To qualify as a low income representative, a board member must*:*
* Be a low-income individual (defined as being a member of a household with an income at or below 80% of the area median income, adjusted for household size);
* Live in a low-income neighborhood (a neighborhood where 51% of the residents have incomes at or below 80% of the area median income); or
* Elected representatives of a low-income neighborhood organization (a neighborhood based organization serving a low income neighborhood within the CHDO’s service area).
* Community Engagement: A formal process that is described in the By-laws or Resolutions has been established and implemented for low-income program beneficiaries from the organization's service area to advise the organization in all of its decisions regarding design, location, development and management of affordable housing.
* Serving the Community: A minimum of one year of relative experience serving within the community must be demonstrated. The experience may be demonstrated through letters of community support, written statement of organization's community activities, or similar documents
* **Capable of undertaking the development of affordable housing, including:**
* Demonstrated Capacity: A CHDO must have a demonstrated capacity which must be satisfied by having paid employees with housing development experience. To meet the definitional requirement for capacity, an organization’s employees must have experience/capacity relevant to the specific project proposal and the role the CHDO will play of owner, developer, or sponsor. For example, conceptually two identical nonprofit organizations could seek CHDO certification. One proposes a project that is highly similar to other projects the organization has successfully completed using its current employees. The other organization proposes a project that is substantially more complex than anything in it or its employees’ past experience—in short the project is well beyond the capacity of the organization. Even though both groups otherwise meet all of the other definitional criteria, based on the capacity requirement the first group can be certified as a CHDO while the second is not a CHDO.
* Financial Standards: CHDOs must have financial accountability standards that conform to the requirements detailed in 2 CFR 200.302 and 200.303.
* **An independent organization free of undue control by for-profit or governmental entities, including that:**
	+ Governmental Control: No more than 1/3 of the board may be officers or employees of governmental entities.
* Control by a For-Profit Entity: If the organization was created by a for-profit entity, no more than 1/3 of the board may be officers or employees of or appointed by the for-profit entity.
	+ Control by a For-Profit Entity: If the organization was created by a for-profit entity, that for-profit’s purpose cannot include the development or management housing, and the nonprofit must be free to contract with any vendor of its choosing.
	+ Employees: The organization’s employees cannot also be employees of any governmental entity or, if applicable, of the for-profit entity that created the potential CHDO.

While *certification* of an organization as a CHDO can only take place at the point of committing project-funding, the WCDA encourages prospective CHDOs to complete a CHDO Registration in advance of seeking funding. The WCDA will review the CHDO Registration and provide a preliminary determination of whether an organization is likely to be certified as a CHDO. All pre-registered CHDOs will be invited to apply when WCDA issues any notices of funding availability or requests for proposals for the CHDO set-aside.

# CHDO Staff Capacity Requirement

Since HUD limits the capacity determination under §92.2 to an organization’s paid employees, WCDA first needs to identify who the organization’s employees are and how those specific individuals’ experience relates to the project being proposed, including whether it is CHDO owned, developed, or sponsored.

## 3.1 Who counts as paid employees and who does not?

To be counted as paid employees, individuals must:

* Be directly paid by and directly accountable to the CHDO. A CHDO may not rely on staff who are actually employed by another entity and cost-allocated, contracted, or donated to the CHDO.
	+ In the case of a CHDO that is a subsidiary of a larger nonprofit parent organization, an individual could be employed on a part-time basis by the parent and a part-time basis by the CHDO. The key is that the person has a direct employment relationship with the CHDO. In such cases, the person would receive two paychecks from different employers.
	+ Documentation that an individual is a “paid employee” will include an IRS form W-2 or W-4 establishing an employee/employer relationship. In some cases, an individual may not receive a W-2 from the CHDO, and WCDA will require submission of a contract establishing a paid relationship between the CHDO and the individual.
* Cannot be employed, even on a part-time basis, by the for-profit parent entity of a potential CHDO (as applicable). If a nonprofit organization that is sponsored by a for-profit has any employees who are also employees of the for-profit parent, the nonprofit cannot receive CHDO designation. [Note that additional limitations related to the board membership are also addressed in §92.2, CHDO Definition, paragraph (3).]
* Cannot be elected/appointed officials of employed by a governmental entity even on a part time basis. If a nonprofit organization employs individuals who are also employees of a governmental entity, the nonprofit cannot be designated as a CHDO.
* Cannot be board members or volunteers of the organization. Only paid employees may be considered as part of the capacity criteria of the CHDO definition. As noted later, WCDA will consider “supplemental” capacity represented by a CHDO’s board and volunteers as part of its more comprehensive underwriting of specific projects.
* Cannot be a consultant, except during the first year of an organization’s first year receiving funds from the CHDO set-aside (of any PJ).

## 3.2 How will WCDA Assess Employee Experience?

In assessing whether an organization’s paid employees have adequate experience, WCDA will take into account factors including but not limited to:

* The specific role an individual will play relative to the proposed project. For example, if a CHDO employee will be responsible for negotiating project financing, WCDA will look primarily at that individual’s experience playing a similar role in past projects.
* Whether an individual is a full-time or part time employee. Part-time employees are entirely acceptable the provided level of effort available from an individual is appropriate to the scale of the project. For example, a part time construction manger may be acceptable for a small CHDO building two single family homes but entirely inadequate for a CHDO with three different multifamily construction projects underway.
* The individual’s other responsibilities within the organization, including those related to other housing projects in the CHDO’s existing portfolio or planned pipeline.

On balance, to certify that a nonprofit has sufficient capacity to qualify as a CHDO, WCDA must reach a conclusion that an organization’s employees collectively have sufficient experience and capacity to effectively manage the proposed project. While the most projects will involve various third-party professionals such as architects, attorneys, etc. (i.e. the development team), the CHDO’s employees must themselves have core competencies that allow them to exercise control over the project and the development team. Consequently, WCDA has identified the following core roles and skills that should be present among an organization’s employees. The lists vary based on the type of project (homebuyer or rental) and the CHDO or its affiliate’s role (owner or developer).

### 3.2.1 Key CHDO Roles/Skills—Homebuyer Development

* Overall project coordination including project selection, planning, and development team management
* HOME and federal requirement compliance oversight
* Design, land use/zoning, and other local government approvals
* Legal and financial aspects of housing development including negotiating written agreement/contracts
* Underwriting and project financing
* Contractor/builder procurement and ongoing oversight
* Marketing and sales
* Homebuyer relations including counseling, income verification, and lender coordination

### 3.2.2 Key CHDO Roles—Projects involving Rental Development

* Overall project coordination including project selection, planning, and development team management
* HOME and federal requirement compliance oversight
* Design, land use/zoning, and other local government approvals
* Legal and financial aspects of housing development including negotiating written agreement/contracts
* Underwriting and project financing
* Contractor/builder procurement and ongoing oversight
* Property management, including marketing, tenant relations, and community relations
* Service coordination and delivery (if applicable)
* Asset management including ongoing financial oversight and long term capital planning

### 3.3.3 Key CHDO Roles— Projects involving only Rental Ownership

* Overall project coordination including project selection and procurement/oversight of contracted project manager (if applicable)
* HOME and federal requirement compliance oversight
* Legal and financial aspects of housing development including understanding and/or negotiating written agreement/contracts
* Property management, including marketing, tenant relations, and community relations
* Service coordination and delivery (if applicable)
* Asset management including ongoing financial oversight and long term capital planning

# Classifying the CHDO’s Role

To be funded from the CHDO set-aside, a project must be “owned,” developed,” or “sponsored” by a CHDO that has been certified by the PJ. These terms are specifically defined in the HOME rule at §92.300(a) and require that the CHDO have sole and exclusive control over the project. As noted earlier, the determination of whether or not an organization’s staff has capacity is made in the context of the role the CHDO will play as the different roles require different levels of involvement in the project. In particular, CHDOs that will develop housing must have a wider array of staff capacity than CHDOs that will simply be the owner of rental housing.

In the case of homebuyer projects, to be set-aside eligible the CHDO must act as developer. See the **Homebuyer—CHDO Developed** checklist to determine if the project qualifies as a CHDO project.

In the case of rental projects, there are three possible roles that of a CHDO owner, developer, or sponsor. How the project is classified depends in part on whether the CHDO will “only” own a project without actually undertaking development activity and whether the CHDO itself will own the property or if title will be held by another entity controlled by the CHDO.

If the CHDO itself will own the project throughout the affordability period, two roles are possible. The CHDO may be the owner or the developer. See the **Rental-CHDO Owned** and **Rental-CHDO-Developed** checklists.

If the CHDO itself will not own the property, the potential role is that of a CHDO sponsor. There are two ways a project can be CHDO sponsored. First, if the project will be carried out by an affiliate of the CHDO (i.e. a wholly owned subsidiary entity, a limited partnership controlled by the CHDO, or a limited liability company controlled by the CHDO). The affiliate may “own” or “develop” the project. See the **Rental-CHDO Sponsored/Affiliate Owned** and **Rental-CHDO Sponsored/Affiliate Developed** checklists.

The second form of CHDO-sponsored allows a CHDO to develop rental property that will be transferred to another nonprofit upon completion. This role largely overlaps with the CHDO-developed classification for rental projects except that the property will be held during the affordability period by another nonprofit. See the **Rental-CHDO Sponsored/Turnkey** checklist.

# Additional Underwriting Considerations

The Threshold Criteria, CHDO Staff Capacity Determination, and classification of the CHDO’s Role discussed above relate to CHDO-specific provisions of the HOME Rule. Whether or not an organization is a CHDO, §92.250 of the HOME Rule requires that a PJ evaluate a developer’s capacity prior to committing funds. So while the CHDO definition focuses on the capacity of an organization’s employees, in considering whether or not to fund a given project, WCDA will also consider broader aspects of organizational capacity. For example, in addition to having a board that meets minimum membership requirements under §92.2, WCDA prefers to work with CHDOs where the board and staff have strong working relationships and where board members bring professional experiences that enhance their ability to make strategic decisions about development priorities.

The attached **CHDO Organizational Capacity Checklist** outlines the factors WCDA will consider when evaluating whether or not a CHDO should be funded for a specific project. It takes into account past performance, organizational structure, and governance issues not included regulatory CHDO threshold requirements, the quality of the development team that will support the CHDO employees in the project, fiscal soundness concerns, and a CHDO’s relationships with its other partners.

# Optional CHDO Benefits

HOME provides for several other benefits to CHDOs that PJs can choose to provide. While WCDA does not anticipate providing predevelopment loans authorized under §92.301, it will, in limited circumstances, consider allowing CHDOs to retain project proceeds and will consider awarding CHDO operating assistance allowed under §92.208 as further discussed below.

# CHDO Proceeds

For CHDOs undertaking the development of for-sale housing, WCDA will generally require that sales proceeds (after repayment of senior construction loans, reimbursement of documented equity investment by the CHDO, and/or final payment of outstanding developer fee) be returned to WCDA as Program Income. CHDOs may, however, request permission in their applications to retain sales proceeds as “CHDO proceeds.”

While not considered HOME funds, CHDO proceeds must be used either for HOME-eligible activities or other affordable housing efforts approved by WCDA. WCDA may negotiate to allow the use of some or all of the CHDO proceeds:

1. For subsequent HOME-eligible projects otherwise consistent with WCDA’s Consolidated Plan;
2. As operating funding by a CHDO WCDA intends to fund in the future, particularly if the use of such funds as operating assistance is related to a WCDA-endorsed plan for the CHDO to expand its capacity to own, develop, or sponsor HOME-assisted housing; or
3. To support HOME-assisted rental projects previously funded by WCDA that are troubled, for example by funding un-met rehabilitation needs.

CHDOs seeking the ability to retain CHDO proceeds should include a written request explaining their proposed use of funds as part of their application under any RFP issued pursuant to WCDA’s CHDO Program.

# CHDO Operating Assistance

Subject to the limits in §92.208 and §92.300(e), WCDA will consider awarding CHDO operating assistance to an eligible CHDO to support capacity building efforts. In general, WCDA will only fund a given organization with operating assistance one time, either in anticipation of or related to the CHDO’s receipt of funding from WCDA’s CHDO set-aside. For an organization that has previously been funded, WCDA may consider allowing an additional year of CHDO operating funding if i) the CHDO is undertaking a new type of project (e.g. was previously funded to develop for-sale housing but is expanding into rental housing) or ii) if the CHDO has experienced significant staff turnover and the additional operating support is determined to be necessary to complete a project that is underway.

Pursuant to HUD requirements, WCDA will use no more than 5% of its annual allocation of HOME funds for CHDO Operating Assistance (for example in FY 2018, 5% of WCDA’s allocation was $11,813). Additionally, no single CHDO may receive more than 50% of its annual operating budget or $50,000, whichever is greater, in the form of CHDO Operating Assistance.

This limit is an aggregate limit and must take into account any CHDO Operating Assistance an eligible CHDO receives from other PJs (such as the State) and any “pass through” funding received from a technical assistance intermediary (which is uncommon).

CHDOs seeking Operating Assistance must submit a written request explaining their proposed use of funds and how the receipt of Operating Assistance will expand or maintain the CHDO’s capacity to undertake the proposed project as part of its application under any RFP issued pursuant to WCDA’s CHDO Program. If WCDA determines that a CHDO’s project application would have been funded but for sufficient capacity, it may award operating funds as part of a plan to expand the organization’s capacity in anticipation of the likely award of project funding within the next 24 months.