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This pamphlet is intended to be a general reference guide and should not be relied upon as a sole source of information regarding CHDOs or the HOME program. Program guidelines may change after publication or any time at MFA's discretion. For more detailed information, contact the MFA toll free statewide at 800/444-6880

Introduction

Nonprofit organizations can play key roles in the improvement of their communities. One special type of nonprofit group, called a Community Housing Development Organization (CHDO), is particularly suited to address affordable housing needs at the local level.

CHDOs undertake this effort through the HOME Investment Partnerships Program. HOME is a federally funded housing program created in 1990 as part of the Cranston-Gonzalez National Affordable Housing Act. The HOME program is intended to create partnerships among federal, state and local governments and those in the for-profit and nonprofit sectors who build, own manage, finance and support low-income housing.

Funds are allocated to states and local governments on a needs-based formula. To encourage nonprofit organizations to participate, at least 15% of HOME funds must be set aside for CHDOs.

The New Mexico Mortgage Finance Authority (MFA) has been designated to administer the HOME program - including its involvement with CHDOs- for the State of New Mexico, except in the cities of Albuquerque and Las Cruces. HOME funds primarily are allocated for rental development, tax credits, rental incentives and for other uses deemed necessary by MFA.

CHDO Definition

A CHDO is defined as a not-for-profit, community-based and low-income community service organization whose staff members have the capacity to develop affordable housing for the community it serves. Only projects in which the CHDO acts as a developer, sponsor or owner of housing are eligible to receive a part of the 15% set aside allocation of HOME funds.

The HOME regulation, 24 CFR 92, offers specific guidance to ensure that CHDOs are:

- legally recognized not-for-profit corporations;
- organizations governed by and in service to low-income communities; and
- organizations committed to and capable of engaging in the development of affordable housing.

The CHDO is a specific type of local nonprofit entity. All CHDOs are nonprofits, but not all nonprofits are CHDOs. A CHDO is distinguished by six major factors:

- ***Nonprofit status.*** A CHDO must be a nonprofit corporation with a 501 (c) (3) or a 501 (c) (4) tax-exempt ruling from the Internal Revenue Service.
- ***Board Composition.*** The CHDO's board structure must reflect the community it intends to serve and meet the regulatory requirements of the HOME program.
- ***Affordable Housing Commitment.*** The CHDO must have a stated commitment to develop affordable housing in the community it serves. This commitment should be reflected in its articles of incorporation, organizational bylaws, board resolution or charter.
- ***Self-Government.*** The CHDO must be free of external controls, either from public or for-profit interests.

- **Experience.** The CHDO, or the CHDO's sponsoring entity, must have served the community where it will undertake its housing development activity for at least one year. This previous service to the community need not be housing-related, however.
- **Capacity.** The CHDO must have its own staff and must be capable of engaging in the housing development activity it intends to pursue with the use of HOME funds.

Each of these factors is discussed in greater detail in the following pages.

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Funding for CHDOs

The MFA is the designated agency to designate and fund CHDOs in the State of New Mexico, except in the cities of Albuquerque and Las Cruces. Yearly, as HOME funds become available, the MFA sets aside 15% of its HOME allocation for housing owned, developed or sponsored by CHDOs.

Though CHDOs may engage in other HOME-eligible activities in which they are not the owners, developers or sponsors of the housing, the HOME funds committed to those activities will not count toward a PJ's mandatory 15% set aside.

The MFA may subsequently adjust the level of funds reserved for CHDO activities. As CHDOs experience and capacity change, the MFA can predict more accurately the appropriate funding level for the participating CHDOs.

Roles of a CHDO

Working definitions for the terms "developer", "sponsor", and "owner" - roles a CHDO can take in project's development - have been developed by HUD.

CHDO as "Owner"

The CHDO is an "owner" when it holds valid legal title to or has at least a 99-year leasehold interest in a property. The CHDO may be a co-owner with other individuals, corporations, partnerships or legal entities. ***Example:*** *A CHDO owns a property and contracts with another entity (for-profit or non-profit) to act as a developer and construct new, or rehabilitate existing, buildings. After completion of the development, the CHDO will maintain ownership of the property.*

While the CHDO may be the sole owner with another entity acting as developer, it also can be the owner and developer of its own project. The CHDO can maintain a minority interest in the ownership of the property as long as the CHDO has decision-making authority over the property.

CHDO as "Developer"

A CHDO is a "developer" when, regardless of ownership, it has the contractual obligation to a property owner to either:

- 1) For rental housing, obtain financing, rehabilitate or construct and may maintain/manage the project. If the property is not owned by the CHDO, the contractual obligation to develop the project must be between the owner and the CHDO; **or**
- 2) For the first-time homebuyers programs where the CHDO does not have ownership of the property, obtain financing, rehabilitate or construct and transfer title of the property and the HOME loan/grant obligations from the owner to a HOME qualified first-time homebuyer within a specified timeframe.

If the CHDO does not own the property, but rather develops the property on behalf of an existing owner, a written agreement between the owner and the CHDO must outline their respective obligations.

CHDO as "Sponsor"

A CHDO is a "sponsor" when it develops a project that it solely or partially owns and agrees to convey ownership to a second nonprofit organization before, during or after development of the project.

Other requirements for a CHDO's sponsorship role:

- The HOME funds must be invested in the project owned by the CHDO.
- Prior to commitment of HOME funds, the CHDO sponsor must identify the particular nonprofit organizations that will obtain ownership of the property.
- The second nonprofit must assume all HOME obligations for the project (including repayment of loans and tenant and rent requirements) from the CHDO at a specified time. If the property is not transferred to the nonprofit organization, the CHDO sponsor will remain liable for the HOME obligations.
- The nonprofit organization must be financially and legally separate from the CHDO sponsor. The second nonprofit may have been created by the CHDO, but nevertheless it must be a separate entity from the CHDO.
- The CHDO must provide sufficient resources to the nonprofit organization to ensure the development and long-term operation of the project.
- A CHDO sponsor must always own the project prior to and/or during the development phase of the project.

The developer and sponsor roles are similar in many ways. In both roles, the CHDO carries out the principal project development activities such as acquisition, financing, construction management, and assembly of a capable development team to guide a project from conception to completion.

As developer, however, the CHDO need not own the property. As sponsor, the CHDO must own the property and shift the responsibility to another nonprofit at some specified time in the development process. Transfer could

occur, for example, upon initiation of construction, completion of construction, or issuance of the certificate of occupancy.

Permissible CHDO Activities

With MFA approval, CHDO's may use HOME funds for all eligible HOME activities, as long as the CHDO acts as developer, sponsor or owner of the housing. MFA lists the eligible CHDO activities on its annual Action Plan.

Qualifying Criteria

Following is the primary criteria non-ptofits must meet to obtain CHDO designation. For a complete listing, consult the HOME regulation 24 CFR 92.

Nonprofit Status

CHDOs must have received a tax-exempt ruling from the IRS under Section 501(c) of the Internal Revenue Code of 1986 in order to be designated by the MFA as a CHDO. As a nonprofit 501(c) corporation, no part of a CHDO's earnings may benefit any members, founders, contributors or individuals.

Section 501(c) offers several incorporation options, depending on the type and purpose of the organization seeking the designation for tax-exemption. Two 501(c) designations are permissible under the HOME program:

- 501(c) 3 status - a charitable, not-for-profit corporation: or
- 501(c) 4 status - a community or civic organization.

Service Area

CHDOs must serve a specific, clearly defined geographic area. CHDOs do not need to represent a single neighborhood, but may include in their service area an entire community (i.e., a city, town, village, county or multi county area, but not the whole state) as long as they meet other CHDO requirements. Nonprofits serving special populations must also define the geographic boundaries of their service area in order to qualify as CHDOs.

Board Composition

The structure of a CHDO's board of directors is viewed as the main indicator of community control over the CHDO. A CHDO board must balance strict requirements for minimum community representation on the board with maximum limits on representation from the public and private sectors. At least one-third of the board must consist of representatives of the low-income community being served by the CHDO. For CHDOs, the section 8 definition of "low-income" - an annual gross income less than 80% of the area median income - applies. This requirement can be met in three ways:

- ***Residents of low-income neighborhoods in the community***
Low-income neighborhoods are defined as neighborhoods where 51% or more of the residents are low-income. However, the residents of low-income neighborhoods who serve on CHDO boards do not have to be low-income themselves.
- ***Low-income residents of the community***
In urban areas, "community" is not necessarily limited to 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 contain 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. But, if low-income residents of the community who do not live in low-income neighborhoods are necessary to meet this threshold, the MFA must obtain certification from the resident or the CHDO that the resident does qualify as low-income.

- ***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, or neighborhood church groups can be examples of low-income neighborhood organizations. The

governing body of the low-income neighborhood organization may elect representatives to serve on the CHDO board.

Input from the low-income community is not accomplished only by having low-income representation on the board. The CHDO must also provide a formal process for low-income program beneficiaries to advise the CHDO on design, site location, development and management of affordable housing. The process must be described in writing and it must be included in the organization's bylaws or a board resolution. 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 representatives on its board from every neighborhood in which it will develop, own or sponsor housing.

These CHDO's 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. Examples of these systems may be:

- Ad hoc or special committees of neighborhoods of a proposed development site.
- Neighborhood advisory councils.
- One or more open neighborhood or town meetings.
- Temporary expansion of the CHDO board to include neighbors during the period of housing planning and development activity

A maximum of one-third of the governing board may consist of representatives of the public sector. This limitation is intended to ensure that separation exists between PJs and CHDOs, and that CHDOs are indeed community-based and community-controlled organizations. This limitation is broadly interpreted in order to avoid public control of community-based nonprofits.

Members of a CHDO's governing board are considered representatives of the public sector if they are public officials, including:

- elected officials, such as council members, aldermen, commissioners, state legislators, or school board members;

- appointed public officials, such as planning or zoning commission members;
- public employees, including all employees of public agencies or departments of the PJ's government; or
- a public official's appointees (any individual who is not necessarily a public official but who has been appointed by a public official to serve on the CHDO board).

Members of the board appointed by public officials cannot select other members of the board, so that more than one-third of the members of the governing board cannot be traced back to public officials.

Public officials and their 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, not toward the one-third minimum requirement of community representatives.

These limits on public sector representation on CHDO boards only serve to define CHDOs. Other restrictions on the participation of public officials on the boards of nonprofit organizations seeking public funds apply. PJs should observe conflict-of-interest as well.

The HOME program does not set any other limits on the composition of a CHDO's governing board. The remaining seats may be filled by a wide variety of other parties. Other potential board members may be:

- Low-income residents
- Community representatives (a CHDO board can consist entirely of community representatives).
- Civic and community leaders.
- Affordable housing advocates and providers.
- Individuals willing to contribute particular expertise needed by the CHDO, such as architects, engineers, builders, developers, accountants and grant writers.
- Lenders and others with expertise in underwriting and financial planning.
- Individuals with access to private, corporate or philanthropic resources.
- Human and social service providers.

Sponsored CHDOs

Non-profits that have been sponsored by other non-profits, charities, religious organizations, local or state governments, public agencies or for-profit corporations may qualify as CHDOs, but certain additional requirements and board limitations can apply. PJs, public bodies, or instrumentalities of public bodies cannot be considered CHDOs. Examples of instrumentalities of public bodies include public housing authorities, urban renewal agencies, redevelopment authorities, and downtown development authorities.

Non-profit and charity sponsors

A one-year minimum history of service to the community by a sponsoring non-profit may help a new non-profit to qualify as a CHDO. No limits have been set on the proportion of the board that may be appointed by non-profit or charity sponsors as long as the minimum one-third community representation is met.

Religious organization sponsors

The HOME program prohibits religious organizations from qualifying as CHDOs. They may, however, sponsor the creation of fully secular nonprofits. (See guidelines in Section 92.257 of the HOME rule, 24 CFR 92). No limits have been set on the proportion of the board that may be appointed by the religious organization, but it may not control the nonprofit. The developed housing must be used exclusively for secular purposes and made available to all regardless of religious affiliation or belief.

Local or state government and public agency sponsors

A local or state government 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. All other CHDO rules and requirements also apply.

For-profit corporate sponsors

A CHDO cannot be controlled or directed by for-profit entities or individuals seeking profit from the organization.

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 (i.e., a builder, developer or real estate management firm may not create 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.

The CHDO is free to contract for goods and services from any vendors it selects.

CHDO Experience and Capacity

CHDOs must have at least one year of experience serving the community where they intend to develop HOME-assisted housing. Newly created organizations wishing to become CHDOs can meet this requirement if the parent or sponsoring organization is a non-profit and has provided services to the community for at least one year. The year of service need not be directly related to housing. Prior service to the community cannot consist of a for-profit firm's work in that community.

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

- Experienced key staff who have successfully completed projects similar to those proposed by the CHDO; **or**
- Key staff with limited or no experience who will use experienced consultants for the planning and development activities, as long as a plan is in place for consultants to train the key staff.

Significant differences exist in the levels of experience and capacity required to carry out the variety of housing development activities eligible under the HOME program. Therefore, “experience in having completed similar projects” draws distinction between/development /management of rental housing and development/sale of housing for first-time homebuyers.

***Example:** The Chamizo Oscuro Neighborhood Development Organization (CONDO) has successfully developed over 100 units of housing for first-time 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 project which it will own and manage. This is CONDO's first experience in rental housing development. In order to demonstrate key staff capacity to carry out the HOME-assisted activity they are proposing, CONDO's will retain a consultant who will develop a training plan and assist CONDO's key staff during the development of their first rental housing project on development issues specifically related to rental housing.

For more information on requirements for designation as a Community Housing Development Organization, please contact the Program Administration Department at the New Mexico Mortgage Finance Authority.