

# Experience, Capacity and Financial Accountability

To be certified as a CHDO, the HOME Program requires organizations to demonstrate sufficient: **Experience**, **Capacity** and **Financial Accountability**.

## Experience

CHDOs must demonstrate a history of serving the community where the housing to be assisted with HOME funds will be located.

### Types of experience required

HUD requires that organizations show a history of serving the community by providing:

- ▶ A statement that documents at least one year of experience serving the community.
- ▶ For newly created organizations formed by churches, service or community organizations, providing a statement that the parent organization has at least one year experience serving the community.

### Example of CHDO experience

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.

## Capacity

CHDOs must demonstrate the capacity of key staff to carry out the HOME-assisted activities they are planning.

### Types of capacity required

CHDOs must demonstrate that their staff has the relevant experience necessary to perform the HOME-assisted activities they are planning. CHDOs must have either:

- ▶ Resumes and/or statements of key staff members that describe their experience of successfully completed projects similar to those proposed.

**OR**

- ▶ A plan in place for experienced consultants to help plan and develop proposed projects as well as train key staff.

### **Example of CHDO capacity**

The Cranberry Orchard Neighborhood Development Organization (CONDO) has successfully developed more than 100 units of housing for homebuyers by acquiring, rehabilitating and 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 that it will own and manage. This is CONDO's first experience in rental housing development. To demonstrate key staff capacity to carry out the HOME-assisted activity that they are proposing, CONDO 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.

### **Financial Accountability**

CHDOs must have financial accountability standards that conform to the requirements detailed in 24 CFR 82.21, "Standards for Financial Management Systems."

### **Financial Accountability Requirements**

- ▶ Providing a notarized statement by the president or chief financial officer of the organization.
- ▶ Furnishing a certification from a certified public accountant.

**OR**

- ▶ Supplying HUD with an approved audit summary.

### **Example of CHDO Financial Accountability**

The Growville Housing Corporation (GHC), a nonprofit organization, has been in existence for years. They sell rehabilitated homes to first-time homebuyers who are low-income. GHC is applying to be a CHDO. In the past, the majority of their funds have come from private donations. However, with housing material costs rising, GHC is looking for additional sources of funds. By becoming a CHDO, they will be able to receive HOME funds to do eligible projects. To meet the financial accountability requirement of becoming a CHDO, GHC will have its accountant submit a certification to the local PJ which states its accounting systems meet the financial standards of 24 CFR 84.21.

## Legal Status

The legal status of an organization is the first characteristic examined to determine if it is eligible to become a certified CHDO. There are five legal status requirements that an organization must meet to be certified as a CHDO by a PJ. These are:

1. **Organized Under State/Local Law.** Organizations must show evidence to the PJ, either in their charter or articles of incorporation, that they are organized under state or local law.
2. **Purpose of Organization.** Among its purposes, the organization must have the provision of decent housing that is affordable to low and moderate income people. This must be evidenced by a statement in the organization's charter, articles of incorporation, by-laws, or resolutions.
3. **No Individual Benefit.** No part of a CHDO's net earnings (profits) may benefit any members, founders, contributors, or individuals. This requirement must also be evidenced in the organization's charter or articles of incorporation.
4. **Clearly Defined Service Area.** The organization must have a clearly defined geographic service area which can be described and documented for the PJ.

CHDOs may serve individual neighborhoods or large areas. However, while the organization may include an entire community in their service area (such as a city, town, village, county, or multi county area), they **may not** include the entire state.

5. **Nonprofit Status.** The organization must have a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) of the Internal Revenue Code of 1986. The ruling must be evidenced by a 501(c) certificate from the IRS.

### Non Profit Status

To be certified by a PJ, a CHDO must have a tax-exempt ruling from the IRS under Section 501(c) of the Internal Revenue Code of 1986. There are many incorporation options under Section 501(c), depending on the type and purpose of the organization seeking the tax-exempt designation.

The 501(c) designations permissible for CHDOs under the HOME regulations are:

- ▶ **501(c)(3)** status - a charitable, nonprofit corporation
- ▶ **501(c)(4)** status - a community or civic organization
- ▶ **Section 905** status - subordinate organization of a 501(c) organization

### Receiving 501(c)(3) or 501(c)(4) Designation

While receiving a 501(c)(4) designation is easier and less time consuming than

the 501(c)(3), applicants should be aware that most corporate and philanthropic giving is **limited to 501(c)(3) organizations**. Therefore, seeking a 501(c)(4) designation may ultimately limit the CHDO's capacity to raise non-government funds.

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

501(c) designation may take nine to 24 months, though the time frame varies by IRS region.

- ▶ Usually, 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 this period of time, the organization may operate legally as a 501(c) organization, with all benefits pursuant to that designation, while the IRS monitors its operations.
- ▶ Assuming the organization operates in compliance with applicable regulations during this period, the IRS will grant them **final** 501(c) designation.

The HOME requirement for a 501(c) designation can be fulfilled by documenting either a **conditional** or a **final designation** from the IRS. However, submission of documentation that an application for 501(c) status is pending at the IRS is not sufficient to fulfill this requirement.

# Organizational Structure

The HOME Program establishes requirements for the organizational structure of a CHDO to ensure that the governing body of the organization is controlled by the community it serves. These requirements are designed to ensure that the CHDO is capable of decisions and actions that address the community's needs without undue influence from external agendas.

There are four specific requirements related to the organization's board which must be evidenced in the organization's by-laws, charter, or articles of incorporation. These are:

1. **At least** 1/3 of the organization's board must be representatives of the low-income community served by the CHDO.
2. **No more than** 1/3 of the organization's board may be representatives of the public sector, including any employees of the PJ.
3. If a CHDO is sponsored by a for-profit entity, the for-profit may not appoint more than 1/3 of the board. The board members appointed by the for-profit may not appoint the remaining 2/3 of the board members.
4. There are also maximum limits on representation and control by a for-profit entity when the CHDO is sponsored by a for-profit entity.

## Low-income community representation

(CHDO Checklist, Section III. ORGANIZATIONAL STRUCTURE, A.)

As noted above, a *minimum* of one-third of the board must consist of representatives of the low-income community.

### 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. No PJ verification of the CHDO certification of income is required.

**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.

**Low-income input**

(CHDO Checklist, Section III. ORGANIZATIONAL STRUCTURE, B.)

Input from the low-income community is not met solely 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, 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.
- 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.
- 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.

**Public-sector limits** 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.
- 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 - council members, aldermen, commissioners, state legislators, members of a school board, etc.
    - Appointed public officials - members of a planning or zoning commission, or of any other regulatory and/or advisory boards or commissions that are appointed by a PJ official.
    - Public employees - all employees of public agencies (including the schools) or departments of the PJ's 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 public official - any individual who is not necessarily a public official, but who has been appointed by a public 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 1:*** 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 2:** *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.*

**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.

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.

## CHDO Board Composition Chart

| CHDO Board Structure Requirements                | Board Representation Requirement/Restriction | Notes   |
|--|--|---|
| Community Representatives                        | 1/3 Minimum                                  | Minimum can be met by: <ol style="list-style-type: none"> <li>1. Residents living in low-income neighborhoods</li> <li>2. Residents who are low-income</li> <li>3. Elected representatives of low-income neighborhood organizations</li> </ol> Does not include anyone that is a public official (see below). |
| Public Officials                                 | Maximum of 1/3                               | Includes elected officials, appointed public officials, public employees, and board members appointed by a public official.   |
| <b>Sponsored CHDOs</b>                           |  |   |
| Nonprofit/Charity Sponsors                       | No Limits                                    |   |
| Religious Organization Sponsors                  | No Limits                                    | The nonprofit must be a separate secular entity from the religious organization. Membership must be made available to all persons, regardless of religion or membership criteria.   |
| Local/State Government or Public Agency Sponsors | Maximum of 1/3                               | Includes elected officials, appointed public officials, public employees, and board members appointed by a public official.   |
| For Profit Sponsors                              | Maximum of 1/3                               | For profit sponsor cannot appoint more than 1/3 of the board. Members appointed by the for profit cannot appoint remaining members.   |

***This document is provided to help to explain what is required in “Item II, A” of the CHDO Checklist***

## **TITLE 24—HOUSING AND URBAN DEVELOPMENT**

### **PART 84 UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS**

#### **Subpart C Post-Award Requirements**

##### **Section 84.21 Standards of financial management systems**

- (a) HUD shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Recipients' financial management systems shall provide for the following:
- (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 84.52. If a recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.
  - (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
  - (3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
  - (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
  - (5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101 – 453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, “Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.”

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, HUD, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

This is an excerpt from 24 CFR Part 92.2 regarding Community Housing Development Organizations (CHDOs)

Community housing development organization means a private nonprofit organization that:

- (1) Is organized under State or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:
  - (i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
  - (ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and
  - (iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing;
- (4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c) (3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1);
- (5) Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;
- (6) Has standards of financial accountability that conform to 24 CFR 84.21, ``Standards for Financial Management Systems;''
- (7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(courtesy of Housing Assistance Council, aka: HAC)

## Summary of OMB Circular A-122

### "Cost Principles for Non-Profit Organizations".

- A. Basic Considerations - To be allowable, costs must meet the following general criteria:
  - 1. Costs must be reasonable:
    - a. Recognized as ordinary and necessary.
    - b. Arms length transactions.
    - c. Individuals concerned acted with prudence.
    - d. Not deviating from established practices of the organization.
  - 2. Costs must be allocated to the grant, project, etc. in accordance with benefits received.-
    - a. Incurred specifically for the award.
    - b. Benefits both award and other work and can be reasonably distributed in proportion to benefits received.
    - c. Necessary to overall operation - if no direct relationship to award can be shown.
- B. Direct Costs
  - 1. Can be identified specifically with a particular grant, award, project, etc.
  - 2. Direct costs of minor amounts may be treated as indirect.
  - 3. Unallowable costs may be treated as direct costs for computation of overhead rates.
- C. Indirect Costs
  - 1. Costs that have been incurred for common objectives but cannot be readily identified with a particular grant, award, project, etc.
- D. Allocation of Indirect Costs
  - 1. Simplified Method:
    - a. Used when major functions benefit from indirect costs to approximately the same degree.
    - b. Distribution base may be total direct costs, direct salaries or other equitable distribution base.
  - 2. Multiple allocation base method:
    - a. Used when major functions benefit in varying, degrees from indirect costs.
    - b. Costs separated into distinct groupings. Each grouping then allocated to benefiting functions by means of base which best measures-relative benefits.
- E. Selected Items of Cost
  - 1. Advertising - only advertising costs allowable are those associated with:
    - a. Recruitment of personnel.
    - b. Procurement of goods.

- c. Disposal of surplus materials.
2. Bad debts - unallowable.
3. Bonding costs - allowable.
4. Communication costs - allowable.
5. Compensation for personal services:
  - a. Includes salaries, wages, director's and executive committee fees, incentive awards, fringe benefits, pension plan costs, location allowances and cost of living, differentials.
  - b. Allowable provided they are reasonable.
  - c. May be direct or indirect. Fringe benefits in the form of vacation, sick pay, holidays, and authorized absences are allowable provided they are absorbed by all organization activities in proportion to relative time or effort devoted to each.
  - d. Fringe benefits in the form of social security, employee insurance, workmen's compensation, pension plans etc. are allowable provided they are distributed in accordance with salaries and wages chargeable to particular awards and activities.
  - e. Charges to award for salaries and wages must be supported by documented, approved payroll records:
    - i. Distribution must be supported by personnel activity reports (time sheets).
    - ii. Time sheets must be maintained by all personnel whose compensation in whole, or in part, is charged to government awards.
    - iii. Time sheets must reflect after-the-fact determination of actual activity of each employee.
    - iv. Each time sheet must account for employees total time.
    - v. Time sheets must indicate total number of hours worked each day.
    - vi. Time sheets must be signed by employee and approved by supervisor.
    - vii. Time sheets must be prepared at least monthly.
6. Contingency reserves - unallowable.
7. Contributions – unallowable.
8. Depreciation - allowable.
9. Donated services:
  - a. Not reimbursable.
  - b. May be used in overhead computations in allocating,, indirect costs.
10. Employee moral, health, and welfare costs - allowable as indirect costs.
11. Entertainment costs - unallowable.
12. Equipment and other capital expenditures:
  - a. Equipment - Personal property with useful life of more than 2 years costing \$500 or more per unit.

- i. Special purpose equipment - usable only for research, medical scientific or technical activities - allowable as direct cost with prior approval of items costing over \$1000
    - ii. General purpose equipment - usable for other purposes
      - 1. Unallowable as direct cost.
      - 2. Depreciation allowable as indirect costs.
  - b. Land, buildings or improvements.
    - i. Unallowable as direct costs.
    - ii. Depreciation allowable as indirect costs.
- 13. Fines and penalties - unallowable.
- 14. Idle facilities and idle capacity - unallowable.
- 15. Insurance and indemnification - allowable.
- 16. Interest, fund raising, and investment management costs - allowable.
- 17. Labor relations costs - allowable.
- 18. Losses on other awards - unallowable.
- 19. Maintenance and repair costs - allowable.
- 20. Materials and supplies - allowable.
- 21. Meeting, conferences - allowable provided they do not involve entertainment costs.
- 22. Membership, subscriptions and professional activity costs allowable.
- 23. Organization costs (incorporation fees, attorneys, accountants etc. in connection with establishment or reorganization of organization allowable.
- 24. Overtime, premium pay - allowable as direct costs with prior approval.
- 25. Page charges in professional journals - (e-mail publications) allowable.
- 26. Participant support costs - allowable as direct costs with prior approval.
- 27. Participant support costs – allowable as direct costs with prior approval.
- 28. Patent security costs - allowable.
- 29. Pre-award costs - allowable only with written approval.
- 30. Professional service costs - allowable when reasonable in relation to services and not contingent on recovery from government. In determining allowability, certain factors are relevant:
  - a. Nature and scope of service in relation to service required.
  - b. Necessity of contracting for service vs. organization's own capability.
  - c. Past patterns.
  - d. Impact of government awards.
  - e. Does proportion of government work to total organization work, justify in favor of incurring cost.
  - f. Can service be performed more economically by hiring employee.
  - g. Qualifications of individual performing service.
  - h. Adequacy of contractual agreement.
  - i. Retainer fees must be supported by evidence of services low available.
- 31. Profits and losses on sale or retirement of depreciable property:
  - a. Allowable - charge or credit must be included in cost grouping where depreciation was applicable.

32. Public information service costs - (pamphlets, new releases and other forms of disseminating information):
  - a. Allowable as direct costs with prior approval.
  - b. Allowable as indirect costs.
33. Publication and printing costs:
  - a. Allowable as direct costs with prior approval.
  - b. Allowable as indirect costs.
34. Rearrangement and alteration costs - allowable with prior approval.
35. Reconversion costs - (restoration or rehabilitation cost) - allowable.
36. Recruiting costs - allowable.
37. Relocation costs - (employee relocation) allowable within certain limitations.
38. Rental costs - allowable within certain limitations.
39. Royalties and other costs for use of patents and copyrights allowable.
40. Severance Pay - allowable to the extent required by:
  - a. Law
  - b. Employer-employee agreement
  - c. Established policy
  - d. Circumstances of particular employment
41. Specialized service facilities - allowable within certain limitations.
42. Taxes - allowable -unless: exemptions - front taxes are available.
43. Termination costs - (costs in connection with termination of award):
  - a. For common items reasonably usable on organization's other work - unallowable.
  - b. Cost continuing after termination - allowable only if cannot be discontinued despite all reasonable efforts.
  - c. Loss of value of special tooling etc. - allowable.
  - d. Rental costs - (unexpired leases) - allowable.
  - e. Settlement expenses - generally allowable.
44. Training and education costs - allowable.
45. Transportation costs (related to goods purchases) - allowable.
46. Travel costs:
  - a. Airline travel allowable except first-class.

Foreign travel allowable only with prior approval. Each separate