

## **HOME Final Rule: CHDO Roles Webcast Transcript**

Welcome to the “CHDO Roles” webcast session, part of HUD’s “Introduction to the New HOME Final Rule” webcast series. The 2013 HOME rule clarifies and establishes new roles for Community Housing Development Organizations as owners, developers, and sponsors of housing. This webcast introduces these changes.

The new rule contains significant changes relating to CHDOs. It includes changes to staff capacity requirements in the CHDO Definition and new requirements related to the commitment and expenditure of CHDO set-aside funds. This webcast focuses on the definitions of “own, develop or sponsor” established in the rule.

The HOME statute has always required that 15 % of HOME funds be used only for housing that is “owned, developed, or sponsored” by CHDOs. Previously, HUD described each of these roles in administrative guidance. The new rule codifies each of these roles in regulation for the first time at 24 CFR 92.300(a). HUD has made some changes to these roles, which we will review in a moment.

The new rule also established more stringent capacity requirements for nonprofit organizations to qualify as CHDOs. CHDOs are required to have paid staff with experience relevant to the specific role that they will undertake— as either the owner, or the developer or the sponsor of housing. So, the required experience would be development experience for a CHDO acting as a developer or sponsor of housing. A CHDO acting as an owner would need to demonstrate experience owning and managing housing.

One of the most significant changes in the new rule relates to the role of a CHDO as owner of rental properties. In the past, the roles of owner and developer were essentially identical because, in either case, the CHDO acted as the developer of the property.

In the new rule, HUD has changed the role of a CHDO rental owner so that the CHDO owns the rental property in fee simple during the affordability period, but does not directly undertake the development of the property. The CHDO can purchase standard rental housing that it will own and operate. Or, in projects involving rehabilitation or new construction, the CHDO purchases the land or project, and contracts with a developer to carry out those development activities. The CHDO must maintain control of the development process. If it lacks in-house capacity, it may hire or contract with an experienced project manager to oversee the project on its behalf.

This new role is significant because it will enable many nonprofits that lack in-house development capacity to access the CHDO set-aside for the first time. Neighborhood-based nonprofits that operate on too small a scale to sustain development capacity,

nonprofits in rural areas, and other private nonprofit housing organizations will be eligible to receive CHDO set-aside funds so that they can own and operate housing that serves the low- and very low-income residents of their neighborhoods.

The definition of Developer is largely unchanged, although some clarifications have been made.

In the developer role, the CHDO must own and directly develop the property. For rental projects, the CHDO is required to own the housing, act as the developer in sole charge of the development process, and then continue to own the project in fee simple absolute and maintain effective project control during the period of affordability.

For homebuyer projects, the CHDO must be the owner and developer of the project, arrange project financing, and remain in sole charge of the development process until it sells the unit to an eligible homebuyer.

Finally, the new rule revises the CHDO sponsor definition so that there are now two models.

The original sponsorship model remains largely unchanged. Under this model, a CHDO owns and develops a rental project on behalf of another nonprofit organization and then transfers ownership of the project to that nonprofit at a pre-determined point in the development process. The CHDO must obtain title to the project before development begins. It must also identify the nonprofit that will eventually own the property before it enters into a written agreement for HOME funds with the participating jurisdiction. The new rule states that the nonprofit to which ownership is transferred cannot be an entity created by a governmental entity. If transfer does not occur for any reason, the CHDO retains responsibility for both the HOME funding and the HOME project.

The new rule also establishes a new sponsorship model that applies to CHDO set-aside projects that will be owned by a wholly owned subsidiary of the CHDO or a partnership of which the CHDO or its wholly owned subsidiary is the sole managing member or sole general partner.

Rental project partnerships are still permitted under the sponsor definition, but with some additional clarifications regarding the required project control under such scenarios. The CHDO, or its wholly owned subsidiary, must be the sole general partner of a limited partnership or the sole managing member of a limited liability company. The previous rule did not reference LLCs, which are a more recent and increasingly popular form of ownership.

When a CHDO set-aside project is owned by a Limited Partnership or Limited Liability Company under this sponsorship model, the PJ must ensure that the partnership

agreement does not permit the CHDO or its subsidiary to be removed as sole general partner or sole managing member except for cause – such as mismanagement of the project. If the partnership agreement permits removal of the CHDO or its subsidiary for cause, it must also stipulate that the new sole general partner or managing member can only be another CHDO.

These new and revised roles apply to CHDO projects to which HOME funds are committed on or after August 23, 2013. Consequently, PJs must ensure that they commit set-aside funds only if the CHDO is functioning in one of these capacities. If that is not the case, the PJ can still commit regular, non-CHDO HOME funds to the project.

HUD will issue additional guidance on these provisions. However, PJs must immediately begin implementing these changes. First, PJs must update their policies and procedures to ensure that all projects to which they are about to commit CHDO set-aside funds meet the new requirements. This may also include revisions to applications for CHDO designation and CHDO set-aside project applications. PJs should also assess all potential set-aside projects moving through their pipeline for compliance with the new provisions. HUD recommends that PJs pay particular attention to the ownership structure of proposed Low-Income Housing Tax Credit projects that will be owned by partnerships including CHDOs.

Finally, PJs should conduct outreach to existing CHDOs and to nonprofit organizations that may be considering applying for CHDO status. PJs should ensure that these partners understand the new requirements for housing owned, developed and sponsored by CHDOs and that the projects they propose for set-aside funding in the future will comply.

Thank you for joining in the webcast session on “CHDO Roles”. Be sure to tune-in to the additional webcasts in this series, including the “CHDO Qualifications and Certification” session. You can also visit the New HOME Final Rule page on the HOME website for additional guidance and resources.