

## **II. HOME PROJECT/ACTIVITY REQUIREMENTS**

### **13. CHDO OPERATING EXPENSES**

This chapter covers the requirements and eligible uses for CHDO Operating Expense assistance that may be provided to eligible Community Housing Development Organizations (CHDOs.) However, the Department further defines eligible uses and requirements for these funds through its Housing and Community Development Annual Action Plan, Application Guidelines and the Program Contract. Applicants and awardees must adhere to the requirements imposed on HOME funds for the particular program year and specific award.

#### **13.1 Regulatory Background**

HOME rules permit the provision of operating assistance to qualified CHDOs that have a CHDO project or are expected to receive CHDO set-aside funding in the next 24 months. The maximum grant amount request is outlined annually in the Departments Annual Action Plan and Application Guidelines. The maximum grant amount request must not be more than 50% of the CHDO's total operating expenses within that fiscal year (this also includes organizational support and housing education provided under section 233(b)(1) and (2) of the Act, as well as funds for operating expenses provided under §92.208(a)).

Projects currently eligible for the State's CHDO set-aside include:

- Purchase, Rehabilitation, and Resale, which includes acquisition, development subsidy and/or down payment assistance; and
- New construction of homes, which includes land acquisition, infrastructure, development subsidy and/or down payment assistance.

CHDO projects must meet the HOME regulatory requirements for homebuyer projects (Chapter 14). The HOME rule permits rental projects to be developed with set-aside funds, and if the State permits such projects, the projects must meet the requirements for HOME rental projects (Chapters 16 and 17). This Chapter does not address CHDO project requirements. The operating expense funds are not to pay for the set-aside project, but to support the organization that has or will have a set-aside project.

#### **13.2 Eligible Uses of CHDO Operating Funds**

CHDO Operating Expenses means reasonable and necessary costs for the operation of community housing development organization. Such costs include:

- Salaries, wages, and other employee compensation and benefits
- Employee education, training, and travel
- Rent & utilities

- Communication costs
- Taxes and insurance
- Equipment, materials and supplies

Project-specific expenses are not eligible. These expenses include costs directly related to implementing affordable housing project or program such as staff salaries to accept and review applications for a homebuyer assistance program. On-going rental project operating expenses are also not eligible for these funds.

Within the CHDO Operating funding category, the Department may award funding for eligible operating expenses (not project related):

- Assist the organization in maintaining the current level of production and/or development of affordable housing;
- Assist the organization in increasing their capacity; including hiring new staff; and/or
- Assist the organization in expanding their services or coverage area.

If awarded a CHDO Operating grant, the CHDO organization will be expected to have the capacity to have a CHDO Project within 24 months from receiving the CHDO Operating award.

Contracts will be for 24 months.

### **13.3 CHDO Qualification**

Eligible applicants include community-based non-profit 501(c)(3), 501(c)(4), or section 905 (subordinate organization of a 501(c) organization) organizations with the provision of decent housing that is affordable to low- and moderate-income persons among the purposes of the organization.

The Nebraska Department of Economic Development (DED or “the Department”) determines nonprofit organizations as an eligible CHDO as defined in the HOME Investment Partnerships Program 2013 Final Rule Subpart A, §92.2. This determination is made at the time of commitment of funds.

CHDOs must maintain their eligibility as a CHDO for the term of the operating expense contract and any set-aside project contract.

Two checklists are provided as attachments:

- CHDO Requirements Checklist – for determining if the organization meets the regulatory definition to be considered a CHDO; and
- CHDO Roles Checklists – for determining project eligibility for the CHDO set-aside

## Attachment 14-1. CHDO Requirements Checklist – Draft

Before committing CHDO set-aside funds to an organization, the PJ must certify that the organization:

1. Meets the definition of a “community housing development organization” in §92.2;
2. Has a project eligible for the set-aside that the organization will own, develop, or sponsor in accordance with §92.300(a); and
3. Has paid staff with demonstrated experience appropriate to the role the organization will play for the project being funded.

<b>CHDO Requirements</b>	<b>Rule Citation</b>	<b>Check if CHDO meets requirement &amp; documentation is in file</b>
<b>ORGANIZATIONAL REQUIREMENTS</b>		
<b>1. Legal structure</b>		
1.1. The organization is organized under state or local law.	§92.2 CHDO Definition ¶ (1)	<input type="checkbox"/>
1.2. The organization has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its chapter, articles of incorporation, resolution or by-laws.	§92.2 CHDO Definition ¶ (7)	<input type="checkbox"/>
1.3. The organization has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual.	§92.2 CHDO Definition ¶ (2)	<input type="checkbox"/>
1.4. The organization is not under the control or direction by any individual or entity seeking to derive profit or gain from the organization.	§92.2 CHDO Definition ¶ (3)	<input type="checkbox"/>
1.5. The organization has one of the following IRS tax exempt statuses:  1.5.1. Exemption under 501(c)(3) or 501(c)(4); 1.5.2. Subordinate of a central nonprofit under IRC Section 905; or 1.5.3. A private nonprofit that is a wholly owned subsidiary of an organization that has 501(c)(3) or (c)(4) status and meets the CHDO definition.	§92.2 CHDO Definition ¶ (4)	<input type="checkbox"/>
1.6. The organization is not a governmental entity (including participating jurisdiction, other jurisdiction, Indian tribe, public housing agency, Indian housing authority, housing finance agency, or redevelopment authority).	§92.2 CHDO Definition ¶ (5)	<input type="checkbox"/>
<b>2. Independence</b>		
2.1. Public officials & employees of a governmental entity may comprise no more than 1/3 of the board. No more than one-third of the governing board members may be public officials or employees of a government entity.	§92.2 CHDO Definition ¶ (5)	<input type="checkbox"/>
2.2. Officers and employees of a governmental entity cannot be officers (e.g. CEO, CFO, or COO) or employees of a CHDO.	§92.2 CHDO Definition ¶ (5)	<input type="checkbox"/>

<b>CHDO Requirements</b>	<b>Rule Citation</b>	<b>Check if CHDO meets requirement &amp; documentation is in file</b>
2.3. If the organization was created by a governmental entity, then the governmental entity that created the organization may not appoint more than 1/3 of the board members and board members appointed by the governmental entity may not appoint remaining 2/3.	§92.2 CHDO Definition ¶ (5)	<input type="checkbox"/> Applicable
2.4. If the organization was created by a for-profit entity, then 2.4.1 through 2.4.4 apply:		<input type="checkbox"/> Applicable
2.4.1. The for-profit entity that sponsored or created the organization may not have as its primary purpose the development or management of housing, such as a builder, developer, or real estate management firm.	§92.2 CHDO Definition ¶ (3)(i)	<input type="checkbox"/>
2.4.2. The for-profit entity that created the organization may not appoint more than 1/3 board members, and for-profit-appointed members may not appoint remaining 2/3 of board.	§92.2 CHDO Definition ¶ (3)(ii)	<input type="checkbox"/>
2.4.3. Officers and employees of the for-profit entity that created the organization cannot be officers or employees of the CHDO.	§92.2 CHDO Definition ¶ (3)(iv)	<input type="checkbox"/>
2.4.4. The organization must be free to contract for goods & services with others.	§92.2 CHDO Definition ¶ (3)(iii)	<input type="checkbox"/>
<b>3. Accountability to the Low-Income Community</b>		
3.1. The organization must have a designated service area (i.e. the “community” in which it produces housing). A community can be a neighborhood or neighborhoods, city, county, metropolitan area, or multi-county area (but not the entire State).	§92.2 CHDO Definition ¶ (8)(i)	<input type="checkbox"/>
3.2. At least 1/3 of the board members are: 1) low-income; 2) residents of a low-income neighborhood; or 3) elected representatives of a low-income neighborhood organization.	§92.2 CHDO Definition ¶ (8)(i)	<input type="checkbox"/>
3.3. The organization has a formally adopted process for low-income beneficiaries to advise it on decisions regarding design, siting, development, and management of housing.	§92.2 CHDO Definition ¶ (8)(ii)	<input type="checkbox"/>

<b>CHDO Requirements</b>	<b>Rule Citation</b>	<b>Check if CHDO meets requirement &amp; documentation is in file</b>
<p>3.4. The organization has at least 1 year of serving the community, or, if it is formed by local churches, service organizations, or neighborhood organizations, its parent organization meets this requirement. The prospective CHDO or its parent organization must be able to show one year of serving the community prior to the date of approval of HOME Funds to the organization. The organization must describe its history (or its parent organization history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or childcare facilities. The statement must be signed by the president or other authorized official of the organization.</p>	§92.2 CHDO Definition ¶ (10)	<input type="checkbox"/>
<b>4. Capacity</b>		
<p>4.1. The organization has paid employees with demonstrated experience relevant to the CHDO's role in undertaking the HOME activity to be funded. (Note: this does not include volunteers, board members, donated or shared staff, or consultants – except as described in 4.1.1. below.)</p>	§92.2 CHDO Definition ¶ (9)	<input type="checkbox"/>
<p>4.1.1. During the first year of an organization's participation as a CHDO only, capacity can be demonstrated through a contract with a consultant who has housing development experience to train appropriate key staff of the organization.</p>	§92.2 CHDO Definition ¶ (9)	<input type="checkbox"/>
<p>4.2. The organization has financial management systems that conform to 24 CFR 200.302 Financial Management and 2 CFR 200.303 Internal Controls.</p>	§92.2 CHDO Definition ¶ (6)	<input type="checkbox"/>
<b>CHDO ROLE</b>		
<p><b>5. CHDO set-aside project</b> CHDOs can undertake either homebuyer or rental projects, as described below, with CHDO set-aside funds:</p>		<input type="checkbox"/> Applicable
<p>5.1. Homebuyer projects in accordance with §92.254 To qualify under CHDO set-aside, must meet either 5.1.1 or 5.1.2,</p>		<input type="checkbox"/> Applicable

CHDO Requirements	Rule Citation	Check if CHDO meets requirement & documentation is in file
5.1.1. Developer: The organization is or will be the owner in fee simple and the developer of new or rehabilitated units for sale to low-income buyers, or 5.1.2. To be the “developer” the community development housing organization must arrange financing of the project and be in sole charge of construction. The community housing development organization may provide direct homeownership assistance (e.g., down payment assistance) when it sells the housing to low-income families and the community housing development organization will not be considered a sub-recipient. The HOME funds for down payment assistance shall not be greater than 10 percent of the amount of HOME funds for development of the housing.	§92.300(a)(6)	<input type="checkbox"/>
5.2 Rental projects in accordance with §92.252. To qualify under CHDO set-aside, must meet one of the following:		<input type="checkbox"/> Applicable
5.2.1. Own: The organization is or will be owner in fee simple absolute (or will hold a long-term ground lease) for at least the period of affordability. If project involves rehabilitation or construction, organization will <u>oversee</u> all aspects of development.	§92.300(a)(2)	<input type="checkbox"/>
5.2.2. Develop: The organization is or will be owner in fee simple absolute (or will hold a long-term ground lease) for at least the period of affordability and will be <u>in sole charge</u> of all aspects of the development process.	§92.300(a)(3)	<input type="checkbox"/>
5.2.3. Sponsor: Must meet one of the following:		<input type="checkbox"/> Applicable
5.2.3.1. The organization will own and develop project that it will convey at a predetermined time after completion to a designated private nonprofit (that was not created by a governmental entity).	§92.300(a)(5)	<input type="checkbox"/>
5.2.3.2. The project will be owned and/or developed by an eligible CHDO affiliate, including: <ul style="list-style-type: none"> <li>• A wholly owned subsidiary of the CHDO; or</li> <li>• A limited partnership of which the CHDO or its wholly owned subsidiary is the sole general partner; or</li> <li>• A limited liability company of which the CHDO or its wholly owned subsidiary is the sole managing member.</li> </ul>	§92.300(a)(4)	<input type="checkbox"/>
<b>CHDO PREDEVELOPMENT</b>		
<b>6. CHDO pre-development loan</b> If a project specific pre-development loan is being provided, in addition to meeting CHDO qualification listed in Items 1 – 4 above and having a set-aside eligible project under Item 5, the predevelopment loan must designate as one of following two loan types:		<input type="checkbox"/> Applicable

<b>CHDO Requirements</b>	<b>Rule Citation</b>	<b>Check if CHDO meets requirement &amp; documentation is in file</b>
6.1. TA/site control loan: The loan is for allowable costs specified in §92.301(a)(2) for planning an eligible set-aside project.	§92.301(a)	<input type="checkbox"/>
6.1.1. Document the environmental exemption under 24 CFR 58.34(a) and/or 58.35(b).	§92.352	<input type="checkbox"/>
6.2. Seed money loan: The loan is for allowable preconstruction costs specified in §92.301(b)(1) for planning an eligible set-aside project.	§92.301(b)	<input type="checkbox"/>
6.2.1. Document the environmental exemption under 24 CFR 58.34(a) and/or 58.35(b).	§92.352	<input type="checkbox"/>
<b>CHDO OPERATING</b>		
<p><b>7. CHDO operating expenses</b>            If CHDO operating expenses are being provided, the organization must meet the CHDO qualification requirements listed in Items 1 – 4 above, or the organization must meet requirements in 1-3 and item 4.2 above and be receiving the operating funds specifically to hire staff to meet the requirements in 4.1 above.</p> <p>In addition, the CHDO must meet the following requirements:</p>	§92.208(a) & §92.300(e)-(f)	<input type="checkbox"/> Applicable
7.1. The organization is funded from the set-aside for a project under development, or is reasonably expected to be funded within 24 months, from the CHDO set-aside.	§92.300(e)	<input type="checkbox"/>
7.2. The operating expense funds will be used for eligible operating costs that are reasonable and necessary.	§92.208(a)	<input type="checkbox"/>
7.3. Operating expense funding (including from other PJs and any Pass-Through funding) in the fiscal year will not exceed the greater of \$50,000 or 50% of the CHDO's total operating expenses in that year.	§92.300(f)	<input type="checkbox"/>
<b>CHDO CERTIFICATION</b>		
<p><b>8. CHDO Certification</b></p> <p><input type="checkbox"/> The organization meets <b>all</b> CHDO regulatory thresholds.</p> <p>And one or more of the following:</p> <p><input type="checkbox"/> The organization has a project that meets the project eligibility requirements of 92.300 for a reservation of CHDO set-aside funds.</p> <p><input type="checkbox"/> The organization has a project that qualifies for a pre-development loan for eligible costs under 92.301.</p> <p><input type="checkbox"/> The organization qualifies for Operating Expenses.</p>		

## Attachment 14-2. CHDO Role Checklists

<b>CHDO ROLE CHECKLIST</b> <b>RENTAL—CHDO OWNED</b>	
Submitted by:	
Project Name:	
Required elements §92.300(a)(2)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Project involves a HOME-assisted rental project.</li> <li><input type="checkbox"/> CHDO itself must solely own the property in fee simple (or via long term ground lease).</li> <li><input type="checkbox"/> CHDO will solely own the property for the required affordability period.</li> <li><input type="checkbox"/> CHDO will EITHER:               <ol style="list-style-type: none"> <li>1. Acquire standard housing (i.e. must meet property standards in §92.251) that will be rented to income eligible tenants, <b>OR</b></li> <li>2. Hire a developer/project manager to oversee development of new or rehabilitated housing. The project manager will, at minimum:                   <ul style="list-style-type: none"> <li>▪ Obtain zoning and other local approvals;</li> <li>▪ Secure non-HOME financing;</li> <li>▪ Manage the selection of a general contractor/builder, and</li> <li>▪ Oversee work progress including cost reasonableness.</li> </ul> </li> </ol> </li> </ul>
Additional considerations	<ul style="list-style-type: none"> <li>• While the CHDO may not be responsible for development activity itself, CHDO staff must have relevant experience in the ownership and ongoing management of similar rental housing projects.</li> <li>• CHDO staff should have experience in managing the work of contracted professionals to provide effective oversight to the contracted project manager/developer.</li> </ul>



<b>CHDO ROLE CHECKLIST</b>	
<b>RENTAL—CHDO DEVELOPED</b>	
Submitted by:	
Project Name:	
Required elements §92.300(a)(3)	<input type="checkbox"/> Project involves the development of new or rehabilitated rental housing that will be leased to income eligible tenants. <input type="checkbox"/> CHDO itself must solely own the property in fee simple (or via long term ground lease) during the development period, and <input type="checkbox"/> CHDO will solely own the property for the required affordability period. <input type="checkbox"/> CHDO must be in sole charge of the development process, including: <ul style="list-style-type: none"> <li><input type="checkbox"/> Obtaining zoning and other approvals;</li> <li><input type="checkbox"/> Obtaining other non-HOME financing needed for the project;</li> <li><input type="checkbox"/> Selecting architects, engineers, general contractors, and other members of the development team; and</li> <li><input type="checkbox"/> Overseeing progress of work and determining cost reasonableness.</li> </ul>
Additional considerations	<ul style="list-style-type: none"> <li>• If CHDO itself will not own the property during development and affordability period but will own the property through a subsidiary, partnership, or limited liability company, the project is not CHDO “developed.” See description of CHDO Sponsored to determine if project may still qualify for set-aside funding.</li> </ul>
<p><b>PJ Determination</b></p> <p>[ ] Project meets <b>all</b> required elements and is eligible for funding from the CHDO set-aside.  [ ] Project does not meet all required elements and is not eligible as a CHDO project.</p> <p><i>Review Notes:</i></p>	

<b>CHDO ROLE CHECKLIST</b>	
<b>RENTAL—CHDO SPONSORED/AFFILIATE DEVELOPED</b>	
Submitted by:	
Project Name:	
Required elements §92.300(a)(4) and §92.300(a)(3)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Project involves the development of new or rehabilitated rental housing that will be leased to income eligible tenants.</li> <li><input type="checkbox"/> One of following CHDO affiliate will develop the project: <ul style="list-style-type: none"> <li><input type="checkbox"/> CHDO’s wholly owned subsidiary;</li> <li><input type="checkbox"/> CHDO or wholly owned subsidiary will be sole general partner of limited partnership; <ul style="list-style-type: none"> <li>▪ Partnership agreement can only allow removal of CHDO or its subsidiary for cause and must provide for replacement by another CHDO.</li> </ul> </li> <li><input type="checkbox"/> CHDO or wholly owned subsidiary will be sole managing member of limited liability company. <ul style="list-style-type: none"> <li>▪ Operating agreement can only allow removal of CHDO for cause &amp; must replace w/ another CHDO.</li> </ul> </li> </ul> </li> <li><input type="checkbox"/> Affiliate must solely own the property in fee simple (or via long term ground lease) during the development period.</li> <li><input type="checkbox"/> Affiliate must solely own property for the affordability period.</li> <li><input type="checkbox"/> Affiliate must be in sole charge of development process, including: <ul style="list-style-type: none"> <li><input type="checkbox"/> Obtaining zoning and other approvals.</li> <li><input type="checkbox"/> Obtaining other non-HOME financing needed for project.</li> <li><input type="checkbox"/> Selecting architects, engineers, general contractors, and other members of the development team.</li> <li><input type="checkbox"/> Overseeing progress of work and cost reasonableness.</li> </ul> </li> </ul>
Additional considerations	<ul style="list-style-type: none"> <li>• PJ must enter into written agreement with the entity that actually owns the property [§92.300(a)(4)(ii)] and determine the form of assistance [§93.200(a)(7)].</li> <li>• CHDO staff should have relevant experience with projects that had similar ownership/financing.</li> </ul>
<p><b>PJ Determination</b></p> <p>[ ] Project meets <b>all</b> required elements and is eligible for funding from the CHDO set-aside.</p> <p>[ ] Project does not meet all required elements and is not eligible as a CHDO project.</p> <p><i>Review Notes:</i></p>	

<b>CHDO ROLE CHECKLIST</b>	
<b>RENTAL—CHDO SPONSORED/AFFILIATE OWNED</b>	
Submitted by:	
Project Name:	
Required elements §92.300(a)(4) and §92.300(a)(2)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Project involves a HOME-assisted rental project.</li> <li><input type="checkbox"/> One of the following types of CHDO affiliate will own the project:               <ul style="list-style-type: none"> <li><input type="checkbox"/> CHDO’s wholly owned subsidiary;</li> <li><input type="checkbox"/> CHDO or wholly owned subsidiary will be sole general partner of limited partnership;                   <ul style="list-style-type: none"> <li>▪ Partnership agreement can only allow removal of CHDO or its subsidiary for cause and must provide for replacement by another CHDO.</li> </ul> </li> <li><input type="checkbox"/> CHDO or wholly owned subsidiary will be sole managing member of limited liability company.                   <ul style="list-style-type: none"> <li>▪ Operating agreement can only allow removal of CHDO or its subsidiary for cause and must provide for replacement by another CHDO.</li> </ul> </li> </ul> </li> <li><input type="checkbox"/> Affiliate must solely own the property in fee simple (or via long term ground lease).</li> <li><input type="checkbox"/> Affiliate must solely own the property for the required affordability period.</li> <li><input type="checkbox"/> CHDO will EITHER               <ol style="list-style-type: none"> <li>1. Acquire standard housing (i.e. must meet property standards in §92.251) that will be rented to income eligible tenants, <b>OR</b></li> <li>2. Hire a project manager/developer to oversee development of new or rehabilitated housing.</li> </ol> </li> </ul>
Additional considerations	<ul style="list-style-type: none"> <li>• PJ must enter into written agreement with the entity that actually owns the property [§92.300(a)(4)(ii)] and determine the form of assistance [§93.200(a)(7)]</li> </ul>
<p><b>PJ Determination</b></p> <p>[ ] Project meets <b>all</b> required elements and is eligible for funding from the CHDO set-aside.</p> <p>[ ] Project does not meet all required elements and is not eligible as a CHDO project.</p> <p><i>Review Notes:</i></p>	

<b>CHDO ROLE CHECKLIST</b>	
<b>RENTAL—CHDO SPONSORED/TURNKEY</b>	
Submitted by:	
Project Name:	
Required elements §92.300(a)(5) and 92.300(a)(3)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Project involves the development of new or rehabilitated rental housing that will be transferred by the CHDO to another nonprofit upon completion and leased to income eligible tenants</li> <li><input type="checkbox"/> Nonprofit receiving property upon completion must: <ul style="list-style-type: none"> <li><input type="checkbox"/> Be identified by the CHDO prior to commitment;</li> <li><input type="checkbox"/> Not be created by a governmental entity; and</li> <li><input type="checkbox"/> Assume ownership and all HOME obligations, including any loan repayment requirements, at a specified time following completion of the development.</li> </ul> </li> <li><input type="checkbox"/> CHDO must own the property in fee simple (or via long term ground lease) during the development period.</li> <li><input type="checkbox"/> CHDO must be in sole charge of the development process, including: <ul style="list-style-type: none"> <li><input type="checkbox"/> Obtaining zoning and other approvals;</li> <li><input type="checkbox"/> Obtaining other non-HOME financing for the project;</li> <li><input type="checkbox"/> Selecting architects, engineers, general contractors, and other members of the development team; and</li> <li><input type="checkbox"/> Overseeing progress of work and cost reasonableness.</li> </ul> </li> <li><input type="checkbox"/> If identified nonprofit does not assume ownership as planned, CHDO must maintain ownership for the affordability period.</li> </ul>
Additional considerations	<ul style="list-style-type: none"> <li>• While the subsequent nonprofit owner will ultimately assume HOME agreements and financing, PJ must enter into written agreement with the CHDO, and HOME funds must be invested while the CHDO holds title to the project.</li> </ul>
<b>PJ Determination</b>	
<p>[ ] Project meets <b>all</b> required elements and is eligible for funding from the CHDO set-aside.</p> <p>[ ] Project does not meet all required elements and is not eligible as a CHDO project.</p> <p><i>Review Notes:</i></p>	