

MEMORANDUM

HOME Investment Partnerships Program (HOME) Policy Guidance

This policy remains effective until it is amended, superseded, or rescinded.

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SUBJECT: Policy and Procedure regarding (1) committing CHDO set-aside to a specific local project in projects which consist of rehabilitation or new construction (with or without acquisition) and (2) certification of CHDO qualification at time of commitment of funds.

This policy memorandum describes the policies and procedures of the Department's HOME Investment Partnerships Program (HOME) regarding (1) committing CHDO set-aside to a specific local project in projects which consist of rehabilitation or new construction (with or without acquisition) and (2) certification of CHDO qualification at time of commitment of funds. In the event of any conflict between this policy memorandum and any other relevant guidance published by the Nebraska Department of Economic Development, this document controls. In the event of any conflict between this policy memorandum and the following, the following control: relevant guidance published by the US Department of Housing and Urban Development, federal statutes, or federal regulations.

Applicable Regulation and Guidance

2 C.F.R. § 92.300 Set-aside for community housing development organizations (CHDOs).

(a) Within 24 months after the date that HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be owned, developed or sponsored by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, includes funds transferred from a State under § 92.102(b). The participating jurisdiction must certify the organization as meeting the definition of "community housing development organization" and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. For purposes of this paragraph:

(1) Funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization (or project owner as described in paragraph (a)(4) of this section) committing the funds to a specific local project in accordance with paragraph (2) of the definition of "commitment" in § 92.2.

2 C.F.R. § 92.2 Definitions.

Commitment means:

(1) The participating jurisdiction has executed a legally binding written agreement (that includes the date of the signature of each person signing the agreement) that meets the minimum requirements for a written agreement in § 92.504(c). An agreement between the participating jurisdiction and a subrecipient that is controlled by the participating jurisdiction (e.g., an agency whose officials or employees are official or employees of the participating jurisdiction) does not constitute a commitment. An agreement between the representative unit and a member unit of general local government of a consortium does not constitute a commitment. Funds for administrative and planning costs of the HOME program are committed based on the amount in the program disbursement and information system for administration and planning. The written agreement must be:

(v) To commit to a specific local project, as defined in paragraph (2) of this definition.

(2) Commit to a specific local project means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or sub recipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

Project means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building. For tenant-based rental assistance, project means assistance to one or more families.

24 C.F.R. § 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) Responsibilities. The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise.

(c) Provisions in written agreements. The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(3) For-profit or nonprofit housing owner, sponsor, or developer (other than single-family owner-occupant). The participating jurisdiction may preliminarily award HOME funds for a proposed project, contingent on conditions such as obtaining other financing for the project. This preliminary award is not a commitment to a project. The written agreement committing the HOME funds to the project must meet the requirements of “commit to a specific local project” in the definition of “commitment” in § 92.2 and contain the following:

(i) Use of the HOME funds. The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor, or developer must describe the address of the project or the legal description of the property if a street address has not been assigned to the property, the use of the HOME funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively

monitor performance under the agreement to achieve project completion and compliance with the HOME requirements.

(ii) Affordability. The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. The affordability requirements in § 92.252 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction has the right to require specific performance.

(A) If the owner or developer is undertaking rental projects, the agreement must establish the initial rents, the procedures for rent increases pursuant to § 92.252(f)(2), the number of HOME units, the size of the HOME units, and the designation of the HOME units as fixed or floating, and include the requirement that the owner or developer provide the address (e.g., street address and apartment number) of each HOME unit no later than the time of initial occupancy.

(B) If the owner or developer is undertaking a homeownership project for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements that must be imposed on the housing, the sales price or the basis upon which the sales price will be determined, and the disposition of the sales proceeds. Recaptured funds must be returned to the participating jurisdiction.

(iii) Project requirements. The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted. The agreement may permit the owner to limit eligibility or give a preference to a particular segment of the population in accordance with § 92.253(d).

(iv) Property standards. The agreement must require the housing to meet the property standards in § 92.251, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

(v) Other program requirements. The agreement must require the owner, developer or sponsor to carry out each project in compliance with the following requirements of subpart H of this part:

(A) The agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(B) The federal requirements and nondiscrimination established in § 92.350.

(C) Any displacement, relocation, and acquisition requirements imposed by the participating jurisdiction consistent with § 92.353.

(D) The labor requirements in § 92.354.

(E) The conflict of interest provisions prescribed in § 92.356(f).

(F) If HOME funds are being provided to develop rental housing, the agreement must set forth all obligations the participating jurisdiction imposes on the owner in order to meet the VAWA requirements under § 92.359, including the owner's notice obligations and owner obligations under the emergency transfer plan.

(vi) Records and reports. The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements. The owner of rental housing must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with § 92.252. If the rental housing project has floating HOME units, the owner must provide the participating jurisdiction with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements. The agreement must specify the reporting requirements (including copies of financial statements) to enable the participating jurisdiction to determine the financial condition (and continued financial viability) of the rental project.

(vii) Enforcement of the agreement. The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction and the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be imposed by deed restrictions, covenants running with the land, use restrictions, or other mechanisms approved by HUD under which the participating jurisdiction has the right to require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(viii) Requests for disbursement of funds. The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) Duration of the agreement. The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

(x) Community housing development organization provisions. If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300, 92.301, and 92.303. If the community development organization is receiving HOME funds as a developer of homeownership housing, the agreement must specify if the organization may retain proceeds from the sale of the housing and whether the proceeds are to be used for HOME-eligible or other housing activities to benefit low-income families. Recaptured funds are subject to the requirements of § 92.503. If the community housing development organization is receiving assistance for operating expenses, see paragraph (c)(6) of this section.

(xi) Fees. The agreement must prohibit project owners from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, rental project owners may charge reasonable application fees to prospective tenants may charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary. The agreement must also prohibit the developer that is undertaking a homeownership project from charging servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.

(a) Within 24 months after the date that HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be owned, developed or sponsored by community housing development organizations. . . . The participating jurisdiction must certify the organization as meeting the definition of "community housing development organization" and must document that the organization has capacity to own, develop, or sponsor housing each time it commits funds to the organization. . . .

Notice CPD-15-09: Requirements for Committing HOME Funds

IV. WRITTEN AGREEMENT REQUIREMENTS FOR COMMITMENTS

1) Written agreements for specific local projects

b) Community Housing Development Organization (CHDO) agreements

Project-specific CHDO reservations –

The 2013 revisions to the HOME regulations made important changes to awarding funds to a CHDO. The HOME regulations have always required that PJs reserve 15 percent of their HOME funds to CHDOs within 24 months. Before the regulatory changes, a PJ could reserve funds to a CHDO with the expectation that the CHDO could find, locate, and develop projects. This is no longer the case. A PJ must now require that a CHDO identify a specific local project before funds can be reserved to that CHDO.

Policy and Procedure

Based on the regulatory requirements and administrative guidance indicated above, the State of Nebraska, as the Participating Jurisdiction may no longer "reserve" CHDO funds for projects that will be identified at a later date. Additionally, the Department must certify and appropriately document that organizations seeking CHDO set-aside funds meet the definition of "community housing development organization" each time the Department commits funds to the organization.

When project consists of rehabilitation or new construction (with or without acquisition) the Department and CHDO must execute a written, legally binding agreement under which HOME assistance will be provided to the CHDO for an identifiable project for which (1) all necessary financing has been secured, (2) a budget and schedule have been established, (3) underwriting has been completed, and (4) under which construction is scheduled to start within twelve months of the agreement date before funds can be considered committed pursuant to 24 C.F.R. § 92.2 or reserved pursuant to 24 C.F.R. § 92.300.

As such, the Department will require proposed projects be identifiable by address or legal description and meet the four criteria set forth in the prior paragraph before the Department can (a) certify and document that an organization meets the definition of CHDO then (b) enter into a written, legally binding agreements meeting the minimum requirements in 24 C.F.R. § 92.504(c). Once all criteria are met, the CHDO certification has taken place, and the written agreement is executed, the Department will consider the funds committed to a specific local project and reserved as CHDO set-aside.