

**KENTUCKY HOUSING CORPORATION**  
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)  
QUESTIONS & ANSWERS

*Following are questions that have been posed to KHC over the years regarding CHDO policies and regulations. KHC's response follows each question.*

**Question:** Are the following scenarios eligible activities under the CHDO set-aside?

- Scenario #1: CHDO assumes ownership of a unit in need of no rehabilitation and then conveys ownership to an income-eligible household.
- Scenario #2: A household conveys ownership of their dilapidated unit to a CHDO which, in turn, rehabilitates the unit and conveys ownership back to the family.

**Answer:** Neither Scenario #1 nor #2 is eligible under the CHDO set-aside. For Scenario #1 to be eligible, the unit must require rehabilitation of at least \$1,000. Scenario #2, regardless of the property transfer prior to rehabilitation, would still be classified as homeowner rehabilitation, which is an ineligible activity under the set-aside.

**Question:** If a nonprofit is allocated HOME funds under the Community Housing Development Organization (CHDO) set-aside for a home buyer project, can these HOME funds be used to help a family refinance existing housing debt and rehabilitate the unit?

**Answer:** No. As required by the HOME regulations, to be funded under the CHDO set-aside category, a CHDO must assume the role of owner, developer and/or sponsor. In this scenario, the nonprofit is not assuming any of these three roles, as defined by the regulations. As a result, this unit in question would be classified as homeowner rehabilitation, which is not a CHDO-eligible activity.

Furthermore, if a nonprofit was funded for home buyer activity, but under the CHDO set-aside category, the scenario would still be classified as homeowner rehabilitation and would not be eligible.

**Question:** How does KHC disburse CHDO operating funds?

**Answer:** If the CHDO is currently in the 4-year cycle of receiving operating support, the funds are disbursed on a calendar quarter basis for eligible reimbursable expenses. For example, for eligible expenses incurred during the quarter of January, February and March, the CHDO may submit a CHDO operating draw request in April. Please note that once the 4-year term has expired, additional operating funds will not be awarded.

**Question:** For CHDOs that are allowed to retain CHDO proceeds, how much of these funds may be retained for administrative costs?

**Answer:** Ten percent (10%) of the CHDO proceeds may be retained for administration.

**Question:** If a CHDO is allowed to retain CHDO proceeds, how must these funds be used?

**Answer:** As defined in the HOME Final Rule, proceeds generated from CHDO set-aside activities differ from program income. HUD has clarified that proceeds generated from the investment of CHDO set-aside funds in a HOME-eligible project **and** that are retained by the CHDO are not subject to the requirements of the HOME regulations, except in the event of repayment or recapture. Therefore, CHDO proceeds have no federal identity and are not subject to lead-based paint requirements, the Davis-Bacon Act, Uniform Relocation Act, etc. However, since CHDO proceeds are derived from HOME funds, any activities funded with CHDO proceeds may not be counted as match.

As outlined in CPD Notice 97-09, CHDO proceeds must always be used for HOME-eligible or other affordable housing activities to benefit low-income families. KHC has further defined this as affordable housing initiatives for households at or below 100 percent of the area median income, including the following:

- rental assistance,
- emergency repairs,
- energy (weatherization) repairs,
- indoor plumbing,
- project reserves,
- operating subsidies,
- supportive services (as defined by the Continuum of Care Supportive Housing Program),
- land banking,
- predevelopment costs,
- housing counseling,
- homeowner repair, accessibility and adaptability.

KHC will consider additional uses of CHDO proceeds on a case-by-case basis.

**Question:** If a CHDO revolves CHDO proceeds in the form of a **grant** to a participant in a HOME-assisted unit, can the CHDO proceeds be considered as match for that unit?

**Answer:** No. CHDO proceeds are never counted as match since they are originally derived from HOME funds.

**Question:** Does a CHDO's service area have to be geographically contiguous?

**Answer:** No, it does not. CHDOs may serve noncontiguous areas. For rural areas, the definition of "community" (i.e., the CHDO service area) is a neighborhood or neighborhoods, town, village, or multi-county area (but not the entire state). For urban areas, "community" may be a neighborhood or neighborhoods, city, county, or metropolitan area. If a CHDO serves noncontiguous areas, particularly widely dispersed noncontiguous areas, KHC strongly suggests that the CHDO take steps to ensure that all areas are represented on the CHDO board.

**Question:** Does a CHDO have to have paid staff or can the staff be volunteers? If they must be paid, do they have to be full-time or can they be part time?

**Answer:** To be designated as a CHDO, an organization must have capacity to carry out the activities for which it receives HOME funding. The CHDO must obtain experienced key staff members who have the requisite skills and experience. While CHDOs may rely upon volunteers to augment capacity or perform some functions, key staff must be paid employees of the CHDO.

**Question:** What/whom constitutes a public official? Is a second grade teacher at a local school a public official and as such counted against the 1/3 limit for public representation on a CHDO's board of directors?

**Answer:** Public officials fall into one of four categories:

- 1) elected officials such as council members, aldermen, commissioners, state legislators;
- 2) appointed public officials such as members of a planning or zoning commission, or of any regulatory/or advisory boards or commissions that are appointed by a participating jurisdiction (PJ) official;
- 3) public employees, i.e., all employees of public agencies (including schools) or departments of the PJ's government; or
- 4) individuals appointed by a public official e.g., an 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.

If a school district is a separate governmental unit from the PJ, then its employees would not constitute public officials for the purposes of CHDO board representation. If the school district is a part of the PJ governmental unit, its employees would be considered public officials.

Since KHC is the state PJ, employees of a local school district would not be considered public officials. However, employees of any state level agency would be considered public officials.

**Question:** If the by-laws of a nonprofit indicate that they are to have a set number of board members, i.e. 10, but at the time of CHDO qualification, only 9 representatives are on the board (1 position is vacant), is the 1/3 low income minimum and the 1/3 public representative maximum based off of the number stated in the by-laws or based on the number of members currently on the board? Alternatively, if the by-laws indicate that the nonprofit will have no more than 10 individuals on the board and the board is currently composed of 9 members, which is the basis for determining the 1/3 percentages?

**Answer:** The HOME rule requires that at least one-third of a CHDO's governing board membership be low-income and that no more than one-third of the board members be public officials. These requirements apply to the total number of board members that are authorized by the CHDO's by-laws. Vacancies can occur on governing boards unexpectedly for any number of reasons and often require some time to fill; however, all vacancies must be filled appropriately and in a timely manner for the board to be compliant.

KHC will give a previously funded CHDO whose board goes out of compliance a reasonable amount of time to fill vacancies and become compliant before taking any action to recapture funds. However, KHC will not make new reservations or project commitments to organizations that are not in compliance with the CHDO board or other requirements until they have corrected the noncompliance.

**Question:** What are the requirements for "effective project control" when using tax credit partnerships to satisfy the CHDO set-aside? [See CPD-97-11, Section III] Specifically, does a for-profit limited partner have the right to remove the CHDO and/or the management agent?

**Answer:** The purpose of the CHDO set-aside is to provide funding to community-based housing developers to produce low-income housing that they own, develop or sponsor. HUD is concerned that, in many HOME projects involving limited partnerships, the CHDO is not truly functioning as the general partner (i.e., does not have effective management control of the project) but was included in the partnership to enable it to access CHDO set-aside funds. If a general partner in a limited partnership is failing to fulfill its responsibilities under the partnership agreement, the limited partners must consult with the PJ that provided the HOME funds. While it may be legally possible to remove the general partner when necessary, it must be remembered that the funds were provided to the limited partnership only because its general partner was a qualified CHDO. If a general partner is removed, it can only be done with the PJ's approval. The PJ must also approve the new general partner and ensure that the project remains an eligible CHDO set-aside project.

The use of CHDO set-aside funds is not limited to projects funded with Low-Income Housing Tax Credits (LIHTC). In fact, most HOME rental projects, CHDO and non-CHDO, do not involve LIHTC.