

# CHDO Single-Family Home Development

## Guidelines

Adopted: TBD



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## INTRODUCTION

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The Cranston-Gonzalez National Affordable Housing Act of 1990 conferred the block grant titled, HOME Investment Partnerships Program (HOME), to promote partnerships among the Federal Government, States, localities, nonprofit organizations and private industry. The vision promoted was for the partnerships to effectively utilize all available resources and a wide variety of approaches to meet affordable housing needs. The key goals of HOME are to provide decent, affordable housing to lower-income households, expand the capacity of nonprofit housing providers, strengthen the ability of state and local governments to provide housing, and leverage private sector participation.

The CHDO Single-Family Home Development Program Guidelines were prepared to inform all interested stakeholders of the baseline requirements for participating in the City of Houston's CHDO Single-Family Home Development Program when utilizing HOME funding. HOME is administered through the U.S. Department of Housing and Urban Development (HUD). The City of Houston (City) is designated as a Participating Jurisdiction by HUD. The City is allocated funds through HOME, which are administered by the Housing and Community Development Department (HCDD). The HCDD's objectives are to increase the availability, accessibility, affordability, and sustainability of decent housing, suitable living environments, and economic opportunity for low- and moderate-income Houstonians.

## DEFINITIONS

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**Acquisition** – All acquisitions must comply with the requirements of [49 CFR Part 24](#), the Uniform Relocation Assistance Act and Real Property Acquisition Policy of 1970, as amended (URA) and the HCDD Uniform Acquisition Policy at <https://www.houstontx.gov/housing/compliance.html>.

**Affordability** – The requirements of HOME that relate to the cost of housing both at initial occupancy and over established timeframes. The homebuyer's written agreement requires housing assisted with HOME funds to meet the affordability requirements of [§ 92.254](#), as applicable, and requires repayment of the funds if the homebuyer does not meet the affordability requirements for the specified time period.

**Affordability Period** – The minimum period of time during which income-eligible households must occupy the property and comply with the HOME rules and regulations. To ensure that HOME investments yield affordable housing over the long term, HOME imposes occupancy requirements over the length of an affordability period. For homebuyer projects, the length of the affordability period requirements varies depending upon the amount of HOME funds provided.

**Area Median Income (AMI)** – The median income of the region, established by HUD, which is adjusted for family size and used to determine the maximum income for households targeted in assisted projects. This is provided by HUD on an annual basis.

**Community Housing Development Organization (CHDO)** – A private nonprofit, community-based service organization with qualified staff that is receiving HOME funds as the owner, developer or sponsor of affordable housing for the community it serves. For the CHDO Single-Family Home Development Program, the CHDO serves the role of developer.

**CHDO Set-Aside Funds** – HOME allocated funds set aside by the City (*a minimum of 15 percent*) from each annual HOME allocation for homebuyer or rental housing which is owned, developed, or sponsored by certified CHDOs.

**Debt-to-Income Ratio (DTI)** – The DTI ratio is a personal finance measure that compares an individual's debt payment to his or her overall income. DTI is calculated by dividing total recurring monthly debt by gross monthly income, and it is expressed as a percentage.

**Direct HOME Subsidy** – The amount of HOME assistance, including any program income, that enabled the homebuyer to buy the unit. This includes down payment, closing costs, interest subsidies, or other HOME assistance provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price. If HOME funds are used for the cost of developing a property and the unit is sold below fair market value, the difference between the fair market value and the purchase price is considered directly attributable to the HOME subsidy.

**Director** – The Director of Housing and Community Development Department or any other person(s) that may be designated to perform the various functions assigned to the Director.

**Environmental Review** – An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards.

**The HOME Investment Partnerships Program (HOME)** – Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.

**Homebuyer** – Income eligible person(s) who purchases a home developed under the CHDO Single-Family Home Development Program.

**Homeownership** – Ownership in fee-simple title or a 99-year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or an equivalent form of ownership approved by HUD.<sup>1</sup>

**Housing and Community Development Department (HCDD)** – The City of Houston Department that administers federal, state, and local funding for affordable housing and economic development projects.

**Housing and Urban Development (HUD)** – A Cabinet department in the Executive branch of the United States federal government. The Department manages and establishes regulations and rules for housing funds, including, but not limited to CDBG, CDBG-DR, and HOME.

**Houston Land Bank** – A local government corporation organized for the purpose of aiding, assisting, and acting on behalf of the City of Houston. The Corporation is also organized to undertake the strategic acquisition, assemblage, management, marketing, development, and disposition of properties throughout the City. The Land Bank was formally known as the Land Assemblage Redevelopment Authority (“LARA”).

**Houston Land Bank Lots** – Residential lots reserved for the development of low-income affordable new single-family homes that are sold to certified CHDOs for a nominal amount.

**Income-Eligible Household** – Households with incomes at or below 80 percent of the median income, adjusted for family size.

**Low-Income Families** – Means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that

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<sup>1</sup> 24 CFR 92.2

HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under [24 CFR 5.612](#).

**Net Proceeds** – The sales price of the home minus superior loan repayment (other than HOME funds) and any closing costs.

**Operating Expenses** – General operating expenses to CHDOs that are receiving set-aside funds for activities or are expected to receive set-aside funds within 24 months of the date of the written agreement. Assistance for operating expenses in each fiscal year may not exceed \$50,000, or 50 percent of the CHDO's total annual operating expenses for that year, whichever is greater.

**Program Funds** – Funds that have been duly appropriated or allocated to the CHDO Program.

**Project Funding** – Any governmental and private funds, used to pay for hard and soft costs to carry out the construction of a new single-family home under the CHDO Program as described in [24 CFR § 92.206](#) – eligible project costs.

**Program Income** – Gross income received by the CHDO or a sub-recipient directly generated from the use of HOME funds or matching contributions.

**Project Pre-development Loans** – Assistance intended to assure that CHDOs have access to funds for up-front, eligible project expenditures. Typical support includes technical assistance and site control loans and seed money loans.

**Project Proceeds** – Proceeds generated from a CHDO development activity (interest on HOME loans or proceeds from permanent financing).

**Recapture** – The recapture option is a mechanism to recapture all or a portion of the direct HOME subsidy if the HOME recipient decides to sell the house within the affordability period at whatever price the market will bear.

**Special Flood Hazard Area (SFHA)** – The land area covered by the floodwaters of the base flood is the SFHA on National Flood Insurance Program (NFIP) maps. The SFHA is the area where the NFIP floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

## PROGRAM OVERVIEW

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As a means of furthering the goal of expanding the capacity of nonprofit agencies to provide affordable housing for low-income households, the HOME statute requires the City to reserve at least 15% of its HOME funding for CHDOs as a set-aside requirement. A CHDO is a specific type of nonprofit organization as defined in [§92.2 Community housing development organization](#) of the HOME Final Rule ([24 CFR Part 92](#)), published in the [Federal Register](#) on July 24, 2013. CHDOs are required to meet certain legal and organizational requirements and have the capacity and experience to carry out affordable housing projects. All activities utilizing HOME funds must ultimately benefit persons with an annual household income that does not exceed 80 percent of the Area Median Income (AMI).

The HCDD is responsible for certifying and recertifying that organizations meet the definition of a CHDO and must document that the organization has the capacity to develop housing each time it recommends to City Council that funds be committed to the organization. The City is entrusted to expand the capacity of CHDOs that (1) develop and manage quality affordable housing; and (2) effectively utilize available resources to provide more affordable housing choices. HUD has established minimum criteria for eligibility as a CHDO. Furthermore, the HCDD has established criteria to ensure that the goals established in the City's Consolidated Plan are accomplished.

The staff of HCDD will administer the program according to HUD approved regulations. The Department Director will have approval authority, as detailed in the CHDO loan agreement, and may delegate said authority. HCDD staff may consult with HUD, as needed, before determining approval or denial. The City is committed to working throughout Houston's neighborhoods to expand and improve the supply of affordable housing to increase opportunities for low to moderate income households to become homeowners.

## CHDO REQUIREMENTS

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The CHDO designation exists only within the HOME Program. The City must certify that an organization is a CHDO in conjunction with and prior to each specific project commitment. The following are key elements for CHDO certification:

- ◆ Meets the HUD definition of a “community housing development organization” in [§92.2](#).
- ◆ Has a housing project eligible for HOME set-aside that the organization will develop in accordance with [§92.300\(a\)](#).
- ◆ Has paid staff with demonstrated experience appropriate to the role the organization will play for the project being funded.
- ◆ The organization must maintain the regulatory requirements of a CHDO throughout the entire development period of the homeownership project.
- ◆ The organization is required to be fiscally sound, with no outstanding liens or unpaid taxes.

### Federal Regulatory Requirements for CHDO Certification

In addition, the organization must meet the following federal regulatory requirements to gain CHDO certification:

**Organized under State/Local Law:** The nonprofit organization must disclose their articles of incorporation as evidence of being organized under state and local law.

**IRS Nonprofit Status:** Organizations must have a 501(c)(3) nonprofit status of exemption letter of certification from the Internal Revenue Service (IRS). A nonprofit organization may qualify as a CHDO if it is a wholly-owned subsidiary of a tax-exempt nonprofit and meets the following criteria:

- ◆ is a wholly-owned entity that is regarded as an entity separate from its owner for tax purposes,
- ◆ the owner has a tax exemption ruling from the Internal Revenue under section 501(c)(3) or (4) of the Internal Revenue Code of 1986, and
- ◆ the organization meets HUD’s definition of “community housing development organization.”

**Purpose of Affordable Housing:** Providing decent and affordable housing must be the organization’s primary purpose. This is evidenced by the organization’s By-laws and/or Articles of Incorporation.

**Benefit No Individual:** No part of the CHDO’s proceeds may benefit any members, founders, contributors, or individuals. This requirement must be evidenced in the CHDO’s Articles of Incorporation.

**Service Area:** The organization must have a clearly defined geographic service area in its Articles of Incorporation and/or By-laws and a map of the service area must be attached to the CHDO Single-Family Home Development Program application.

**Board Representation:** The board of directors must contain no more than one-third representation from the public sector and a minimum of one-third representation from the low-income community it serves. Please see [§92.2 Definitions Community Housing Development Organizations \(8\)\(i\)](#).

**For-Profit Sponsorship:** CHDOs may be sponsored by for-profits if no more than one-third of the CHDO’s board is appointed by the for-profit. If a for-profit creates a CHDO, the for-profit’s officers and employees cannot be officers or employees of the CHDO. The CHDO cannot be controlled by the for-profit and must be free to contract for goods and services. The primary purpose of the for-profit cannot be housing ownership/management as evidenced by the for-profit’s Articles of Incorporation.

**Public Entity:** A public entity can create a CHDO if no more than one-third of the board is public officials or employees of the public entity. Officers or employees of a government entity may not be officers or employees of the CHDO.

**Low-Income Input:** A formal process that is described in the By-laws or Resolutions that has been established and implemented for low-income program beneficiaries from the organization’s service area to advise the organization in all its decisions regarding design, location, development, and management of affordable housing.

**Capacity and Experience:** A CHDO must demonstrate capacity in relation to its role. CHDOs must have paid staff with demonstrated capacity relevant to the specific role that they will undertake as owner, developer or sponsor to be designated as a CHDO. An organization proposing to act as a developer of homebuyer housing will have staff with experience developing and selling for sale housing. Skills needed may include construction oversight, negotiation of financing, homeownership counseling, sales and marketing, and mortgage financing.

- ◆ Key staff members must have significant experience and capacity to carry out CHDO eligible HOME-assisted projects in developing affordable housing as evidenced by resumes.
- ◆ For its first year of funding as a CHDO, an organization may satisfy this requirement through a contract with a consultant who has housing development experience and will advise and train appropriate key staff of the organization.



- ◆ Capacity can also be demonstrated by contracts with consulting firms or individuals who have completed projects like those to be assisted with CHDO funds. The consulting firms or individuals must have written plans detailing the training of CHDO personnel.

**Serving the Community:** A minimum of one year of relative experience serving the community where the organization intends to develop affordable housing must be demonstrated. This must be demonstrated via letters of community support and a written statement of the organization’s community activities.<sup>2</sup>

**Accounting Standards:** The organization must meet and adhere to financial accountability standards found in [24 CFR 84.21](#). Auditor or Certified Financial Statements must be completed in accordance with generally accepted accounting principles and prepared during the last fiscal year.

Organizations having revenues of more than \$300,000 **MUST** submit an audit performed by a Certified Public Accountant, along with their most recently filed IRS Form 990. Organizations having an income **less** than \$300,000 **MUST** submit their most recently filed IRS Form 990, along with the items from **either** of the following:

- ◆ A set of Basic Financial Statements, which MUST include the industry equivalent of a *Balance Sheet, Statement of Cash Flows, Income Statement* and the *Notes to the Financial Statements*. They must have been certified as official financials and evidenced by a copy of the board minutes showing that they were presented and accepted as official financial statements by the entity’s board or governing body.
- ◆ A compiled set of Basic Financial Statements, along with a letter that the compilation was performed in accordance with American Institute of Certified Public Accountants’ industry standards. The compilation must include the industry’s equivalent of the *Balance Sheet, Statement of Cash Flows, Income Statement* and the *Notes to the Financial Statements*.

## The City of Houston’s Requirement

In addition to the regulatory requirements from HUD, the HCCD has established additional criteria for CHDO certification. The organization must demonstrate and maintain the following:

- ◆ A record of good standing with the Texas Secretary of State’s Office.
- ◆ A record of good standing within the City of Houston, with no unpaid tax liens.
- ◆ No history of awarded CHDO funding being de-obligated or significant compliance findings on its City of Houston funded projects within the last seven years.
- ◆ Board meetings are held within Houston city limits at a physical location accessible to the community it serves.
- ◆ Board meetings must be open to the public, and a means of notifying the community 48 hours prior established.
- ◆ In addition to the required one-third low-income representation, at least one-third of the Board members are required to be residents of the [Houston Metropolitan Statistical Area](#).

## Certification and Recertification

The City’s certification of an organization as a CHDO takes place in the context of an affordable housing project that will be funded by the City’s CHDO set-aside. While in practice the City often works with organizations to determine if they are likely to meet the requirements for certification prior to considering a

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<sup>2</sup> See [Building HOME: A HOME Program Primer, Chapter 3: CHDO Requirements and Activities, Capacity and Experience](#), page 3-9.

funding proposal, HOME requires the City to certify the organization as a CHDO meeting the CHDO requirements each time it commits funds to a project. Outside of the context of committing funds to the organization for a specific project, there can be no general “certification” that an organization is a CHDO.

The City has established that CHDO recertification will be biennial. This process takes place through a modified application process. In addition, HOME requires the City to certify the organization as a CHDO meeting the CHDO requirements each time the City commits additional set-aside or operating funds to the CHDO’s project. HCDD is required to document that the CHDO has the capacity to develop housing each time it commits HOME set-aside funds to the CHDO. The application is then reviewed by HCDD. The final approval is made by HCDD’s Director. The criteria above are not comprehensive, and the City may require additional information prior to determining CHDO certification. Meeting the above requirements does not guarantee CHDO certification and the City reserves the right to deny or revoke CHDO certification based on its evaluation of the nonprofit’s organizational performance.

## FUNDING PROCESS

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HCDD administers HOME on behalf of the City by undertaking specific projects which (a) develop affordable housing, and (b) provide a direct subsidy to the homebuyer. Funds are awarded to CHDO Developers through a Request for Proposal (RFP). The RFP process is consistent with the requirements of the City’s Strategic Procurement Division. The City reserves the right to add additional funding sources without notice to CHDO Developers. When matching funds are required by the CHDO, it will be stated in the RFP. The City executes written agreements committing HOME funds to the CHDO developer for a specific local project, with the approval of the Houston City Council.

Projects are defined as having the following attributes:

- ◆ An identifiable project/property with an address or legal description that is under common ownership, management, and financing, and assisted with HOME funds as a single undertaking.
- ◆ A housing market analysis that assesses current market demand in the neighborhood for the type of and number of units, which is not less than 12 months old.
- ◆ A completed environmental review
- ◆ Written evidence of secured financing from all sources for acquisition and construction.
- ◆ An HCDD-approved and established budget.
- ◆ Documented results of cost reasonableness – sources sufficient to cover cost based on all project costs are reasonable and necessary.
- ◆ Underwriting and subsidy layering. The City determines whether HOME funds are reasonable, necessary, and sufficient to ensure financial viability for entire period of affordability.
- ◆ Documented evidence of the required experience and financial capacity of the CHDO Developer.
- ◆ A completion schedule consistent with HOME requirements:
  - ◆ Construction starts within 12 months;
  - ◆ Projected to be completed within 2 years; and
  - ◆ Occupancy deadlines are met for Homebuyer (within 9 months after a ratified sales contract).

## CHDO Developer Role

Housing for homeownership is “developed” by a CHDO with CHDO set-aside funds when homebuyer projects in accordance with §92.254 requirements are met:

- ◆ The CHDO serves the role of developer, will be the owner in fee-simple and develops new single-family homes for sale to eligible homebuyers.
- ◆ The CHDO Developer is required to control the development process. To be the “developer” the CHDO must arrange financing of the project and be in sole charge of construction. The CHDO may provide direct homeownership assistance when it sells the new homes to qualified affordable families. HOME funds for down payment assistance cannot be greater than 10 percent of the amount of HOME funds for development of the housing.

## Construction Finance

The HCDD’s construction financing for each unit is structured as a zero percent interest loan with a twelve (12) month term (with a two (2) month extension upon review and approval) by HCDD, or with a term that coincides with the end date of the Household commitment contract under a written agreement. The maximum construction loan amount may not exceed the total development cost less developer fees/profit and homebuyer closing costs. The loan initially facilitates development assistance to the CHDO Developer. When the home is sold, the required amount of homebuyer assistance is passed through to the homebuyer as direct assistance. All net proceeds are returned to the City.

$$\text{Sales price} - \text{Superior Loan Repayment(s)} - \text{Closing Costs} = \text{Net Proceeds}$$

Before construction loan closing or construction begins, a sales contract must be executed with a qualified homebuyer. The draws on the HOME amounts to subsidize development are made available in 3 performance draws: (a) foundation completion; (b) structure (dry-in); (c) and project completion.

The CHDO is responsible for securing a construction loan or line of credit to cover construction development costs. This construction loan or line of credit may be secured by liens against the property for which its funds are to be advanced, provided that the lien shall be subordinate to the Land Use Restrictions which require that the property be sold to an income qualified homebuyer. The lien on the property shall be released when the construction on the property is complete and the funds advanced for construction on the property have been reimbursed to the City and repaid to the lender. The lien securing the funds advanced by the City shall be subordinate to the liens securing the construction loan or line of credit. The City will reimburse the CHDO Developer based on the completion of foundation, structure (dry-in) and project completion.

## Eligible Uses of CHDO Set-Aside Funding

### Eligible Activities

Eligible activities include the following when carried out by a CHDO acting as the developer:

- ◆ Acquisition of vacant land;
- ◆ New construction of single-family properties; and
- ◆ Direct financial assistance to eligible purchasers of housing developed by a CHDO with HOME funds.

### Project Development

#### *Target Service Areas*

Funds can only be spent in target neighborhoods identified as one of the [Complete Communities](#). Eligible properties are those designated and eligible under HOME for construction as affordable residential properties. All target neighborhoods eligible for redevelopment must be within the City of Houston.

### *Land Acquisition from Houston Land Bank*

The Houston Land Bank (HLB) has set aside vacant lots that can be purchased by CHDO Developers selected to participate in the CHDO Single-Family Development Program. The purchase price for each lot will be set at a nominal amount. HLB will acquire the properties for the development of new affordable single-family homes which will be constructed by CHDO Developers and sold to eligible homebuyers. Homeowners must meet HOME guidelines for long-term affordability and eligibility.

### *Developers Fees*

Developer fees (including consulting fees) are limited to 15 percent of the total development costs. The developer fee will be reduced by \$100.00 per day to be subtracted from the Contract amount for each calendar day that the Work or any portion of the Work remains uncompleted after the expiration of the written agreement contract. Developer fees, along with any other fees earned by the Developer or affiliated entities, including contractor and realtor fees, must be approved by the City. Costs included in the developer fee must be distinguished from costs billed separately to the homebuyer.

### *Eligible Hard Costs*

Eligible hard costs are defined as the following:

- ◆ Acquisition of land
- ◆ Site preparation or improvement
- ◆ Construction materials and labor

### *Eligible Soft Costs<sup>3</sup>*

HOME funds can be used to cover the soft costs associated with a project as long as they are reasonable and necessary to the project. The realtor's fee should be included in the maximum sales price of the home and be paid out at closing. Please note that funding for soft costs is only eligible in collaboration with an eligible hard cost and must be approved by the City. The following list defines the types of project related soft costs that are eligible under HOME:

- ◆ Financing fees
- ◆ Credit reports
- ◆ Title binders and insurance
- ◆ Surety fees
- ◆ Recordation fees, transactions taxes
- ◆ Legal and accounting fees, including cost certification
- ◆ Realtor fees
- ◆ Appraisals
- ◆ Architectural/engineering fees, including drawings, specifications or work write-ups
- ◆ Initial and job progress inspections
- ◆ Builders' or developers' fees
- ◆ Affirmative marketing and marketing costs
- ◆ Homebuyer counseling provided to purchasers of HOME-assisted housing or recipients of HOME assistance
- ◆ Project costs incurred by the City that are directly related to a specific project

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<sup>3</sup> See §92.206 Eligible project costs

## Construction

### *Building Standards*

All work and construction activities must comply with the City of Houston Building Standards to include the following work specifications, standards, checklists and administrative duties:

- ◆ Single-Family Construction Specifications  
[http://houstontx.gov/housing/COH\\_Contractor\\_Performance\\_Manual.pdf](http://houstontx.gov/housing/COH_Contractor_Performance_Manual.pdf)
- ◆ Minimum Property Standards for Rehabilitation, Reconstruction and New Construction  
[http://houstontx.gov/housing/COH\\_Minimum\\_Property\\_Standards.pdf](http://houstontx.gov/housing/COH_Minimum_Property_Standards.pdf)
- ◆ Aging-In-Place Design Standards  
[http://houstontx.gov/housing/Aging\\_in\\_Place\\_Design\\_Standards.pdf](http://houstontx.gov/housing/Aging_in_Place_Design_Standards.pdf)
- ◆ HUD Single-Family Housing Standards  
[http://houstontx.gov/housing/HUD\\_Guidance\\_on\\_Community\\_Planning\\_and\\_Development\\_Green\\_Building.pdf](http://houstontx.gov/housing/HUD_Guidance_on_Community_Planning_and_Development_Green_Building.pdf)
- ◆ Single-Family Elevation Design Standards  
[http://houstontx.gov/housing/Elevation%20Design\\_Standards.pdf](http://houstontx.gov/housing/Elevation%20Design_Standards.pdf)
- ◆ Example of Minimum Specification Standards  
[http://houstontx.gov/housing/HCDD\\_RECON-NEWCON\\_SPECS.pdf](http://houstontx.gov/housing/HCDD_RECON-NEWCON_SPECS.pdf)
- ◆ Single-Family Hazardous Materials Lead-Based Paint and Asbestos Containing Material Requirements  
[http://houstontx.gov/housing/SF\\_LBP\\_ACM\\_Requirements.pdf](http://houstontx.gov/housing/SF_LBP_ACM_Requirements.pdf)
- ◆ City of Houston Public Works Building Code Design Criteria  
[http://houstontx.gov/housing/hpw\\_ce1110\\_coh\\_building\\_code\\_design\\_criteria.pdf](http://houstontx.gov/housing/hpw_ce1110_coh_building_code_design_criteria.pdf)

Additionally, CHDO Developers must:

- ◆ Include inspection reports or certifications by inspectors in their project file
- ◆ Keep an inspection checklist and work documentation in their project file as approved by HCDD.

### *Property Standards*

All newly constructed projects funded with HOME funds must meet applicable local codes and ordinances. The design quality must meet or exceed the [Texas Minimum Construction Standards 2015](#). Single-family homes developed must have an approved raised foundation based on the City of Houston's building codes.

### *Energy Efficiency and Fortified Building*

Plans must incorporate energy efficiency measures through materials, heating, ventilation and air conditioning (HVAC) systems, building design, and site orientation. This Program requires each home to be Energy Star certified (see [HUD, Building ENERGY STAR® Qualified Homes and Incorporating Energy Efficiency and "Green" Building, 2008](#))

CHDO Developers are required to implement the [FORTIFIED Home™](#) program, which is a resilient engineering and building standards adopted by HCDD. Elements of the home are designed to build a more resilient, single-family residence. The key elements include the following:

- ◆ The roof system with upgrades that reduces wind and water from entering the attic through the roof covering and vents.
- ◆ Strengthen windows and doors for hurricanes, and porches and chimneys for tornadoes are required.

- ◆ A strong continuous load path, connecting floors, walls and the foundation, and connecting walls to each other and to the roof so the entire house moves as one, to better stand firm against high winds. This ties the house together by connecting the roof to the walls to the floors to the foundation, so it acts as one system.

## MARKETING AND SALES OF HOMES

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### Affirmative Marketing

HCDD is committed to affirmatively furthering fair housing through its affirmative marketing policies. Affirmative marketing goals are to ensure that outreach and communication efforts reach eligible homebuyers from all racial, ethnic, national origin, religious, familial status, the disabled, “special needs”, and each gender group. Prior to marketing the first completed home, the CHDO Developer must obtain written approval from the City for their Affirmative Fair Housing Marketing Plan (AFHMP). The AFHMP will include the following elements:

- ◆ A satisfactory completed [Affirmative Fair Housing Marketing Plan \(AFHMP\) – Single-Family Housing Form](#) as specified in [§ 200.620](#).<sup>4</sup>
- ◆ Means to carry out an affirmative program to attract buyers, regardless of sex, handicap or familial status, of all minority and majority groups to the housing for initial sale.
- ◆ Means of advertising homes for sale, including, but not limited to publicizing to minority persons the availability of housing opportunities regardless of race, color, religion, sex, handicap or familial status or national origin, through the type of media customarily utilized by the CHDO Developer, including minority publications or other minority outlets which are available in the housing market area.
- ◆ All advertising will include either the HUD-approved Equal Housing Opportunity logo or slogan or statement, and all advertising depicting persons shall depict persons of majority and minority groups, including both sexes.
- ◆ Prominently display in all offices in which sale activity pertaining to the project (homes for sale) takes place, the HUD-approved Fair Housing Poster and include in any printed material used in connection with sales, the HUD-approved Equal Housing Opportunity logo or slogan or statement.

### Fair Housing

It is the policy of the United States to provide, within constitutional limitations for fair housing throughout the United States. The provisions of the Fair Housing Act ([42 U.S.C. 3600, et seq.](#)) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, [42 U.S.C. 3604\(c\)](#), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to housing for older persons, as defined in section 807(b) of the act.

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<sup>4</sup> [Affirmative Fair Housing Marketing Plan \(AFHMP\) – Single-Family Housing Form](#)

## Sales Price

The price homes sold under the CHDO Single-Family Home Development Program will either be the cost to acquire the land and construct the home plus related soft costs, or the appraisal market value of the “as completed” home, whichever is the least. A sales price limit is set for newly constructed single-family housing units to be developed or acquired with HOME funds. This limit is based upon 95 percent of the median purchase price for the area using Federal Housing Administration single-family mortgage program data for newly constructed housing. In determining the sale price, maintenance costs, such as boarding up units, lawn mowing etc., cannot be included.

## Marketing, Screening and Pre-purchase Counseling

In lieu of an operating pro-forma, the City requires the CHDO Developer to have a sales plan in place. This includes a strategy for outreach, and the marketing efforts to sell the homes. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer. The CHDO Developer is responsible for (1) marketing; (2) collecting applications and screening buyers for eligibility; (3) providing assistance as needed to help buyers secure first mortgage financing approvals; and (4) explaining the affordability provisions against the property. The CHDO Developer must obtain written approval from the City for their program marketing plan and budget. The marketing plan will include the following elements:

- ◆ Means of advertising homes for sale; including, but not limited to, such means as Multiple Listing Service, flyers, or other printed materials;
- ◆ Method and timing of prequalifying prospective buyers, in terms of income eligibility and eligibility for mortgage financing;
- ◆ Policy for managing a waiting list of potential buyers;
- ◆ Applicable disclosure statements to be given and explained to buyers prior to signing purchase agreements and at closing;
- ◆ Applicable form of purchase contract; and
- ◆ Provisions for establishing and adjusting sale prices.

## CHDO Use of Project Proceeds

At the discretion of the City, a CHDO may be authorized to retain some or all of the proceeds generated from a CHDO development activity. In the event CHDOs are not allowed to retain project proceeds, said funds must be returned to the City to be receipted and expended following HOME rules. The HOME rule permits the City to choose whether to allow a CHDO to keep and reuse the income as CHDO proceeds rather than requiring the funds to be returned to the City. The RFP will clearly state when the CHDO Developer can retain project proceeds.

# HOMEBUYER ACTIVITIES

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## Homebuyer Requirements

### Low – Income Families

The Homebuyer’s household income must not exceed 80 percent Median Family Income (AMI) and each household must be income qualified as of the date of signature of the homebuyer’s purchase contract.



## Primary Residency

The qualified homebuyer must occupy the property as their principal residence for the affordability period.

## Counseling

All homebuyers who are assisted through HOME funds must attend at least 8 hours of homebuyer counseling through a HUD-certified homebuyer counseling organization. The householder must sign a statement expressing their understanding of the City of Houston's Recapture Policy. Potential homebuyers must provide a copy of the Homebuyer Education Certificate of Completion, prior to closing to the CHDO Developer and HCDD. Counseling must include training on the requirements of the affordability period and the recapture option. The cost of the housing counseling for a HOME-assisted buyer can be charged as an eligible project cost. Any fees charged must be reasonable when compared to homebuyer counseling available in Houston, Texas.

## First Mortgage

HOME funds are intended to fund a portion of the home purchase, and in most cases, there is a difference between the price of the property and what the buyer can afford. The terms of the first mortgage, are critical to determining the amount of assistance and standards for first mortgages must be consistent for the program. HOME requires that homebuyers obtain a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages. (see the Statement at <https://www.fdic.gov/regulations/laws/rules/5000-5160.html>). A first lien conventional mortgage must meet all of the following criteria:

- ◆ May not exceed a term of 30 years;
- ◆ May not be for a term of less than five years;
- ◆ Interest rate may be as low as zero percent as provided in the Program Rules;
- ◆ Fees charged by third party Mortgage lenders are limited to the greater of two percent (2%) of the Mortgage Loan amount or \$3,500, including but not limited to origination, loan application, and/or underwriting fees,
- ◆ The applicant's total Debt-to-Income Ratio shall not exceed 43 percent of Qualifying Income (unless otherwise allowed or dictated by a participating lender providing a fixed rate Mortgage Loan that is insured or guaranteed by the federal government or a conventional Mortgage Loan that adheres to the guidelines set by Fannie Mae and Freddie Mac.) A potential borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form(s) and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of the primary potential borrower(s) and the "non-purchasing" spouse will be considered in the potential borrower's total Debt-to-Income Ratio.
- ◆ The total estimated housing payment (including principal, interest, property taxes, and insurance) shall be no greater than 30 percent of the Household's gross monthly income.

## Down Payment

Down payments are important in reducing the amount of debt on the property, and for ensuring the buyer has something at risk in the transaction. For these reasons, a down payment is a program requirement. Buyer funds for down payment must equal at least one thousand dollars (\$1,000). The buyer is required to provide earnest money which is limited to no more than \$1,000, which may be credited to the homebuyer



at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

## Homebuyer Subsidy

The City of Houston's CHDO Single-Family Development Program is providing direct buyer purchase assistance facilitated as second mortgage financing. The direct subsidy to qualified households is provided as a forgivable loan in accordance with the City's recapture policy. The HOME subsidy is the amount of HOME assistance that enables the homebuyer to buy the unit, and is provided directly to the homebuyer. In addition, direct subsidy includes any assistance that reduced the purchase price from fair market value to an affordable price.

If HOME funds are used for the cost of developing a property and the unit is sold at below fair market value, the difference between the fair market value and the purchase price is considered to be directly attributable to the HOME subsidy. The CHDO Single-Family Development Program will make available Direct Homebuyer Subsidy assistance when an underwriting analysis shows a qualified homebuyer would benefit. After all development subsidy is accounted for, the remaining CHDO funds are reflected in the sale, either as buyer financing (e.g., a soft second recapture mortgage) or as funds recovered from the sale. The funds that are allocated to assist the buyer to purchase – that is, any assistance to the buyer to cover the gap between the fair market sales price and the amount that the buyer can provide through down payment and the first mortgage – are often called “pass-through” assistance. To ensure long-term affordability, the City will impose recapture provisions.

## Affordability Period

The HOME rule at [§92.254\(a\)\(4\)](#) establishes the requirement of a period of affordability for all homebuyer housing. New homes developed in The CHDO Single-Family Home Development Program must meet the affordability requirements for not less than the applicable period specified, beginning after project completion. These provisions are imposed for the duration of the period of affordability through a written agreement with the homebuyer. They are enforced via lien and deed restrictions and covenants running with the land. The CHDO Single-Family Home Development Program has adopted the recapture provision.

For HOME-assisted homebuyer units under the recapture option, the period of affordability is based upon the amount of direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit. Any HOME program income used to provide direct assistance to the homebuyer is included when determining the period of affordability. The recapture provision is triggered by any transfer of title, either voluntary or involuntary, during the established HOME period of affordability. Table 1 below outlines the required minimum affordability periods.

**Table 1: City of Houston Period of Affordability Under Recapture Provisions**

Compliance Periods for Homeownership HOME Direct Subsidy Provided	Minimum period of affordability
Under \$15,000	5 years
\$15,000 to \$25,999	10 years
\$26,000 to 39,999	15 years
\$40,000 or above	20 years

## Recapture Provision

HOME provides financial assistance for income eligible households to acquire housing through homeownership activities. Based on the Houston area housing market conditions, geographical constraints, target market and other factors, the targeted funds are being implemented through the recapture provision. The purpose of this section is to provide the recapture policies of the City in its implementation of the CHDO Single-Family Development Program. Under HOME recapture provisions, financial assistance must be repaid if it is provided directly to the homeowner. At the time of sale, the homeowner may sell to any willing buyer at any price.

The City has elected to reduce the amount of direct HOME subsidy on a pro-rata basis for the time the homebuyer has owned and occupied the housing, measured against the required affordability period. The resulting ratio will be used to determine how much of the direct HOME subsidy the City would recapture. The pro rata amount recaptured by the City cannot exceed what is available from net proceeds.

To determine the pro rata amount recaptured by the City:

- ◆ Divide the number of years the homebuyer occupied the home by the period of affordability,
- ◆ Multiply the resulting figure by the total amount of direct HOME subsidy originally provided to the homebuyer.

$$\frac{\text{Number of years homebuyer occupied home}}{\text{Minimum period of affordability}} \times \text{Total direct HOME subsidy} = \text{Recapture amount}$$

At the time of sale, if there are insufficient net proceeds available to recapture the full pro rata amount due, the City will not require repayment of the difference between the prorated direct HOME subsidy due and the amount the City is able to recapture from available net proceeds. Below is an example of the calculation for this recapture policy.

A homebuyer receives \$40,000 of HOME 2<sup>nd</sup> mortgage assistance and purchases a home developed with HOME funds for \$10,000 below fair market value. The total direct HOME subsidy to the homebuyer is \$50,000 and requires a 20-year period of affordability. If the homebuyer sells the unit in year 10 of the 20-year period of affordability, the City of Houston would *forgive* 50 percent of the direct HOME subsidy and *recapture* 50 percent of the direct HOME subsidy, or \$25,000 of the \$50,000 HOME investment, assuming that there are sufficient net proceeds available.

$$\frac{\text{Owner resided in home for 10 years}}{\text{20 year period of affordability}} \times \$50,000 \text{ direct HOME subsidy} = \$25,000 \text{ recaptured}$$

HCDD is responsible for ensuring that homebuyers maintain the housing as their principal residence for the duration of the applicable affordability period. If the home is sold during the period of affordability, HCDD must be notified of the sale, and the applicable recapture provisions must be employed. Consequently, it is important that HCDD use effective enforcement mechanisms to secure the recapture requirements on specific HOME-assisted properties. Finally, HCDD will provide ongoing monitoring to help ensure that HOME-assisted homebuyer projects are compliant.

## Program Controls

HCDD reserves the right to periodically monitor each property to determine if it was transferred or sold during the time the lien is active. The following sources of verification may be used:

- ◆ Title report
- ◆ Lien and ownership search in the applicable County Clerk's Office online records
- ◆ Ownership verification in applicable tax office appraisal records
- ◆ Certification from owner

## Sale or Transfer of Property

The homebuyer may sell the property to any willing buyer. The sale of the property during the affordability period triggers repayment of the direct HOME subsidy (prorated) that the buyer received when they originally purchased the home.

## Release of Liens

Releases of liens will be issued once a Homebuyer has successfully complied with all the terms and conditions of the CHDO Single-Family Development Program and the Recapture written agreements.

## Verification of Insurance

The Homebuyer must maintain flood insurance protection when the property is located within the Special Flood Hazard Area. In addition, the homebuyer must maintain the required insurance mandated by any mortgage holder.

## Payment of Taxes

Property taxes must be paid before they are delinquent, and evidence of payment must be furnished upon request.

# REGULATORY REQUIREMENTS

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## Environmental Review

The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users.

All properties assisted under this Program will be subject to an Environmental Review by the City prior to land acquisition, and new construction. CHDO Developers will be required to submit the project site address, and parcel identification number, which the City will conduct the environmental review in compliance with [24 CFR Part 58](#). If the project passes the Environmental Review, the city will issue a Notice to Proceed, and the developer may move forward with the approved land acquisition and new construction activity.

A commitment of funds can occur only upon satisfactory completion of an environmental review to determine whether the project meets federal, state, and local environmental standards, and receipt by the City of a release of funds from the HUD under [24 CFR Part 58.35b\(5\)](#). CHDO Developers must agree that the provision of any funds to their project(s) is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. CHDO Developers funding may be required to contract for environmental consulting services to provide the information required, which shall be an eligible project soft cost. In addition, the following regulations are applicable:

- ◆ Per [24 CFR 58.5\(i\)\(2\)\(i\)](#), it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.
- ◆ Lots to be acquired for selection cannot and will not undergo any development or other activity that constitutes a choice limiting action, per [24 CFR 58.22](#), regardless of whether HUD or non-HUD funds are used. Choice-limiting actions include acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation, and leasing or any other activities that commit to future activities. Part 58 regulations are found under Laws and Regulations posted on HUD's Environment website. No HUD funds can or will be used prior to the issuance of the Release of Funds/Authority to Use Grant Funds (AUGF) and all necessary site specific environmental review and clearance as required by [24 CFR 58](#).
- ◆ Regulations found at [24 CFR 58](#) also govern sound mitigation requirements if noise levels in a Normally Unacceptable Noise Zone (NUNZ, 65-75 decibels (dB)) or Unacceptable Noise Zone (UNZ, 75+ dB).
- ◆ Regulations found at [24 CFR 55](#) govern flood mitigation for any existing properties that reside in the 100-year floodplain.
- ◆ Hazardous materials described at [24 CFR 58.5\(i\)\(2\)\(i\)](#) cover all forms of contamination, including but not limited to lead and asbestos that may be found in older homes, particularly those built prior to 1978.

## Davis-Bacon

According to the [Davis-Bacon and Related Acts \(DBRA\)](#) (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) all federal government construction contracts and most contracts for federally-assisted construction over \$2,000 must include provisions for paying workers on-site no less than the local prevailing wages and benefits paid on similar projects. Residential properties containing fewer than eight (8) units are exempt from Davis-Bacon (see Section 110(a), Housing and Community Development Act (HCDA) of 1974). The eight-unit threshold applies to the number of units on a property; not the number of units being rehabilitated or constructed, nor the number of units being funded with federal funds. A property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative, or condominium project.

A property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative, or condominium project. HOME (Section 286, National Affordable Housing Act of 1990, as amended.) has a threshold of 12 or more assisted units. Homeownership can trigger DBRA if a construction agreement is made with an owner/developer of a housing project with 12 or more units where HOME funds will be used to assist homebuyers with buying the housing, and the construction contract covers 12 or more HOME-assisted units. Considering the above, HCDD does not expect to trigger Davis-Bacon and Related Acts requirements for homes constructed under the CHDO Single-Family Development Program.

## HUD Section 3

The work to be performed under this Agreement is on a project assisted under a program providing federal financial assistance from the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, ([12 U.S.C. 1701 u, "Section 3"](#)) applies to the Agreement. Under Section 3, to the greatest extent feasible, for any contract award in excess of \$100,000, the Contractor shall give opportunities for training and employment to lower-income residents of the City and shall award contracts for work in connection with the project to business concerns which are located in or owned in substantial part by persons residing in the City.

## Minority Women Small Business Enterprises

Contractor shall comply with the City's MWBE program as set out in [Chapter 15, Article V of the City of Houston Code of Ordinances](#). Contractor shall make good faith efforts to award subcontracts or supply agreements in at least the value stated in this Agreement to MWBE's. Contractor acknowledges that it has reviewed the requirements for good faith efforts on file with the City's Office of Business Opportunity (OBO) and will comply with them.

Any contract, agreement or other undertaking anticipated for construction work in excess of \$1,000,000, or the supply of goods or non-personal or non-professional services in excess of \$100,000, for which Competitive bids are required by law shall comply with Citywide Goals on projects administered by HCDD.

## Uniform Act – URA

The Uniform Act provides important protections and assistance for people affected by the acquisition, rehabilitation, or demolition of real property for Federal or federally funded projects. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a direct result of projects receiving Federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy. The CHDO Single-Family Home Development Program does not allow for the acquisition of property that has a resident or business occupying the property and will follow the required documentation procedures per the HCDD Uniform Acquisition Procedures and the URA.

## RECORD KEEPING

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All documents pertaining to the buyer shall be retained in the CHDO Developer's file to document compliance with all requirements. The CHDO Developer must establish and maintain records sufficient to document that program requirements are being met. These files are subject to The [Privacy Act of 1974, 5 U.S.C. § 552a](#), which establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifier assigned to the individual. The homebuyer's records must be available for HUD inspection and HCDD. If a client's information is to be shared from one participating service provider to another participating service provider, then consent to share which data, and with whom, should be obtained from the client. Therefore, client consent should be obtained prior to sharing.

Buyer files should be maintained for a period of 5 years after closing, except that notes, mortgages (deeds of trust) and other legal documents enforcing the long-term provisions shall be maintained for five years after the termination of the affordability period. HCDD will provide further training on the following records that must be maintained:

## COMPLAINTS AND APPEALS PROCESS

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HCDD has developed a complaint and appeals process, which will be provided in writing to a Homebuyer. Complaints are categorized as informal and formal. The Complainant is a party with standing (applicant, contractor, or other party directly associated with the Program) who makes a complaint to the Program.

An **informal complaint** will be handled by the Program Counselor, Inspector, Eligibility Supervisor, Project Manager or Division Manager as applicable.

A **formal complaint** is a written statement of grievance (emails, faxes, or letters) submitted by a party with standing (applicant, contractor, or other party directly associated with the Program). Formal complaints include contact information for communication of results. Formal complaints will be acknowledged as received and handled by the Eligibility Supervisor, Project Manager, or Division Manager as applicable, as soon as possible. Complaints will be responded to within in fifteen (15) business days, where practicable.