

The HOME Investment Partnership (HOME) a Federal Entitlement Program has issued a new Final Rule with a publish date of July 24, 2013. Atlantic County is required by the Department of Housing and Urban Development to notify its' citizens of the following changes.

Qualification as "Set-Aside" Funds: Definition of Owned, Developed, Sponsored

With respect to the CHDO set-aside, it is statutorily required that the PJ provide a minimum of 15 percent of its annual HOME allocation for housing that is "owned, developed, or sponsored" by CHDOs. The pre-2013 Rule required a CHDO to have "effective project control" to qualify as a set-aside project. In 1994, HUD issued detailed guidance to clarify what qualified as housing owned, developed, or sponsored by a CHDO. The 2013 Rule codifies these definitions, with a significant modification to the definition of "owner" of rental housing as detailed below.

- **Owner of rental housing.** A CHDO that is an "owner" of rental housing is defined at §92.300(a)(2). The CHDO is required to own (in fee simple absolute or long-term ground lease) multifamily or single family housing that is rented to low-income families, in accordance with §92.252. The CHDO must own the HOME project during development and throughout the period of affordability, and is required to oversee all aspects of the development process. At a minimum, the CHDO can own the property and hire a project manager or contract with a development contractor to oversee all aspects of the development. Under the 2013 Rule at §92.300(a)(2), a CHDO is also permitted to acquire housing that is in standard condition (and meets the property standards at §92.251) provided it owns the housing throughout the affordability period. This new definition facilitates participation of community-based nonprofit organizations that have the capacity to own and operate affordable rental housing in their communities, but do not have the capacity to develop such housing. Consequently, this new definition creates additional opportunities for nonprofit organizations to access the CHDO set-aside funds to address their neighborhoods' affordable housing needs. The new definition of "owner" should also assist rural States, which consistently experience great difficulty in developing and retaining capable CHDOs.
- **Developer of rental housing.** A CHDO that is a "developer" of rental housing is defined at §92.300(a)(3). The CHDO is the owner (in fee simple absolute or long-term ground lease) and developer of the project and must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME funds, selecting contractors, overseeing the progress of work, and determining reasonableness of costs. The CHDO must own the HOME-assisted housing during the development process and throughout the period of affordability. This is a change from the pre-2013 Rule in that the CHDO must own the property; it no longer has the option to be under contract with an owner to develop the property.
- **Sponsor of rental housing.** The 2013 Rule provides two definitions of a "sponsor" of HOME-assisted rental housing:

1. §92.300(a)(4) clarifies the requirement for CHDOs to maintain effective project control when acting as "sponsor" of rental housing. A CHDO "sponsors" rental housing when the property is "owned" or "developed" by:
 - a. A subsidiary of the CHDO (in which case the subsidiary, which may be a for-profit or nonprofit organization, must be wholly owned by the CHDO);
 - b. A limited partnership (in which the CHDO or its wholly owned subsidiary must be the sole general partner); or
 - c. A limited liability company (in which the CHDO or its wholly owned subsidiary must be the sole managing member).

If the limited partnership or limited liability company agreement permits the CHDO to be removed as sole general partner or sole managing member, respectively, the agreement must require that the removal be "for cause" and that the CHDO must be replaced by another CHDO. In addition, HOME funds must be provided to the entity that owns the project.

2. §92.300 (a)(5) codifies the pre-2013 Rule definition of "sponsor." It states that a CHDO "sponsors" HOME-assisted rental housing in situations in which the CHDO owns and develops the housing and agrees to convey the housing to a private nonprofit organization (that does not need to be a CHDO but cannot be created by a governmental entity) at a predetermined time after completion of the project development. Such arrangements typically occur when a CHDO has development expertise and the nonprofit organization has the capacity to own and operate the housing. The CHDO is required to own the property before the development phase of the project and is required to select the nonprofit organization before entering into an agreement with the PJ that commits HOME funds to the project. The nonprofit organization assumes the CHDO's HOME obligation (including any repayment of loans) for the project. If the property is not transferred to the nonprofit organization, the CHDO sponsor remains liable for the HOME assistance and the HOME project.

- **Developer of housing for homeownership.** For HOME-assisted homebuyer projects, the housing is "developed" by the CHDO if it is the owner (in fee simple absolute) and developer of new housing that will be constructed or existing substandard housing that is owned or will be acquired by the CHDO and rehabilitated for sale to low-income families, in accordance with §92.254. To be the "developer," the CHDO must arrange financing for the project and be in sole charge of construction. As part of its set-aside funds, the CHDO can provide direct downpayment assistance to a buyer of the housing it has developed with HOME funds in an amount not to exceed 10 percent of the amount of HOME development funds. In this role, the CHDO is not a subrecipient. This definition is very similar to the pre-2013 definition.
- **Sponsor of housing for homeownership.** Under the pre-2013 Rule a CHDO was able to serve as a "sponsor" of homebuyer housing. There is no equivalent "sponsor" role for homebuyer housing in the 2013 Rule.