

Welcome!

Consolidated and Further Continuing Appropriations Act of 2012:

For CHDOs: Understanding the CHDO Capacity Requirement

TDHCA 9/25/2012

Agenda

- FY 2012 HOME Appropriations Law requirements
- CHDO capacity requirements
 - Current Rule's CHDO designation requirements (92.2)
 - FY 2012: CHDO development capacity & project assessment
- Analyzing & documenting CHDO capacity
 - Designation, reservation, project commitment
- Strategies to build CHDO capacity

Legislative & Regulatory Context

- FY 2012 HOME Appropriation Law requirements
 - *Consolidated and Further Continuing Appropriations Act of 2012* (PL 112-55)
 - Statutory requirements—“law of the land”
 - Applies to activities identified as 2012 Consolidated Plan/Annual Action Plan projects AND CHDO reservations made from a PJ’s FY 2012 HOME allocation
- [CPD Notice 12-007](#) provides operating guidance
- Proposed HOME Rule
 - Despite similarities, essentially does not exist



FY 2012 HOME Appropriations Law Requirements

- Program Deadlines
 - 4 years to complete project
 - 6 months from construction completion to sell homebuyer units or must convert to rental or repay HOME
- Project Assessment—PJ must assess
 - Neighborhood Market
 - Developer Capacity & Fiscal Soundness
 - Project Underwriting
- CHDO Development Capacity
 - Emphasis on CHDO staff capacity

Key Definitions

- CHDO Designation
 - Threshold step, but no funding
- CHDO Reservation
 - Preliminary reservation of funds, but not legally binding
- Commitment
 - Legally binding written agreement, specific project identified and various compliance reviews completed
- Certification
 - PJ's "sworn statement" to HUD that is has followed HOME requirements

CHDO Capacity

Existing Rule

- CHDO Designation

FY 2012 CHDO Development Capacity Requirement

- CHDO Reservation

FY 2012 Project Assessment Requirement

- Project Commitment

Criteria for CHDO Designation

- Requirements (92.2 & Notice CPD-97-11)
 - Legal structure
 - Purpose
 - Governance
 - Capacity & experience
 - At least 1 year history of serving the community
 - “Demonstrated capacity”

CHDO Designation Context

- CHDO designation exists wholly within HOME
- CHDO activities must involve acquisition, construction or rehabilitation, and sale (homebuyer) or rental of housing to eligible households
- Some “CHDOs” also act as “subrecipients” or “contractors,” using HOME for non-development purposes

Existing CHDO Criteria—Capacity

- To be a CHDO, an organization must have “demonstrated capacity for carrying out activities assisted with HOME funds”
- Two paths to the “designation” requirement:
 - “{Hire} experienced key staff members who have successfully completed similar projects,” or
 - “{Hire} a consultant with the same type of experience and a plan to train appropriate key staff members of the organization”

FY 2012 Appropriations Law Requirement: CHDO Development Capacity

“PJs may only provide FY 2012 HOME funds for development activities to Community Housing Development Organizations (CHDOs) that have demonstrated that they have staff with demonstrated development experience.”

CHDO Development Capacity Requirement

- Applicability
 - FY 2012 CHDO set-aside funds
- Definition of staff
 - Who is, who isn't
- Context of determination
 - By commitment, demonstrate staff capacity given size, scope, and complexity of project
- CHDOs must comply with PJ policies & procedures, even if more restrictive

Applicability

- CHDO set-aside funds from a PJ's FY 2012 allocation
 - CHDO acting as developer, owner, sponsor
 - Reservation (even if project not yet identified)
- Not applicable to:
 - CHDO operating expenses – which may support creation/enhancement of “capacity”
 - Non-CHDO functions, such as subrecipient
 - Reservations of prior fiscal year funds

Definition of Staff

- Paid staff – “HUD defines CHDO staff as paid employees who are responsible for the day-to-day operations of the CHDO”
 - Part-time or full-time employee
 - Contracted employee
- “Staff does not include volunteers, board members, or consultants.”

Organizational Responsibilities

- Responsible for day-to-day organizational duties for the project and beyond
- Has authority to act on behalf of the CHDO for day-to-day decisions
 - E.g., approve contracts, payments, change orders
- Oversees development team (i.e. consultants)

Who Is Not Staff?

- “Staff” does not include volunteers, board members, or consultants
- Consultant characteristics
 - Activity/project-specific contractual engagement
 - Time limited
 - Discrete tasks, not related to general operations
 - Limited/no authority to act on behalf of CHDO

Shared Staff

- Parent/subsidiary relationship
 - CHDO subsidiary serves as development entity for multi-service parent
 - National nonprofit/local affiliate (e.g. VOA, Habitat)
 - “Public entity” parent (e.g. PHA)
- Document inter-agency agreement:
 - Specific staff (with experience)
 - Specific services and day-to-day responsibilities and authority
 - Payment for services

Context of Capacity Determination

- PJ must determine & document per local policy:
 1. CHDO has staff
 2. Staff have demonstrated development experience
 3. Staff experience appropriate for project size, scope, complexity
 4. Other FY 12 requirements met, inc. market assessment, underwriting, fiscal soundness

Potential Changes by PJs

- Fewer generic reservations, PJs making project specific reservations
- Competitive funding processes based more explicitly on capacity to perform in a timely manner, as required by the Act
- Incorporating project feasibility into the funding decision
- Soliciting projects to address PJ priority needs and locations rather than leaving the CHDO to choose



Analyzing & Documenting CHDO Capacity & Experience



Compliance Requirements

- PJ must have written policies & procedures
- PJ must document capacity assessment
 1. Staff development experience requirement
 2. Developer capacity & fiscal soundness (as part of FY 2012 Project Assessment Certification)

Policies & Procedures

- Policies to define:
 - Eligible staff (and what is not staff)
 - Required staff experience
 - Organizational development capacity
 - Development team capacity
- Procedures to outline:
 - Submission/documentation required
 - When: CHDO designation, reservation, commitment
 - PJ process to review and approve
 - Appeals

1. Staff Development Experience

- Prior staff “development” experience
 - Acquisition, construction/rehabilitation and operation of rental or sale of homebuyer
- Past success and relevant skills:
 - Project & team management
 - Project financial structuring
 - Design and/or construction oversight
 - Marketing/sales or ownership/management

Documentation

- Staff employment status
 - Employee: payroll and/or Federal employment documentation: W-4, W-2
 - Contracted staff: contract plus W-9 or 1099
 - Shared staff: inter-agency MOU if parent-subsidiary
- Staff experience
 - Resume or summary of relevant experience

2. Developer Capacity & Fiscal Soundness

- Past and current performance
- Capacity
 - Beyond staff experience: board, team, etc
- Fiscal soundness
- Other factors: community/lender relations

CHDO Experience & Capacity

- Organizational structure
- Management
- Pipeline/portfolio
- Staff capacity
- Board capacity
- Project specific skills

Development Team Capacity

- Are team roles filled with qualified persons?
- Do they need a partner or consultant?
- Does the team have relevant experience?
- Has the team worked together?

Fiscal Soundness

- **Financial management: 84.21 standards**
 1. Accurate, current & complete disclosure of financial results
 2. Records of the source and application of funds
 3. Safeguard all assets and assure use for authorized purposes
 4. Comparison of outlays with budget amounts
 5. Written procedures for receipt of funds and disbursement
 6. Written procedures for applying OMB cost principles
 7. Cost accounting records with source documentation
- **Financial stability – Is there stable and adequate funding for operations?**

Fiscal Soundness, cont

- **Liquidity: Are there funds to pay project bills?**
 - Pre-development costs (CHDO pre-development loans)
 - Capital advances/outlays prior to reimbursement
 - Internal costs until developer fees earned
- **Audit – Are audits done in a timely manner and are findings (if any) resolved?**
- **Portfolio – Is the portfolio stable or at risk?**

Other Factors

- Community relations
 - Does CHDO have experience working with the community, a good reputation, local support, and effective partnerships with other stakeholders?
- Local government relations
- Lender relations
- Project specific skills/capacity
 - For-sale: counseling, marketing, buyer programs
 - Rental: capacity to own and manage/oversee



Strategies to Assist CHDOs to Meet the Requirements



Business Planning

- Encourage strategic planning
- Recruit board members with skills
- Seek staff training
- Review annual budgets & audits
- Seek partners & consultants
- Request intermediary TA

Financial Assistance

- CHDO operating expenses
 - To build/expand staff capacity
- CHDO pre-development loans
 - To provide liquidity
- CHDO proceeds
 - To build longer-term financial strength

Underwriting & Packaging

- Make sure project has identified “market”
- “Right-size” the project
- “Right-size” the assistance
- Build the development team
- Design for sustainability
- Pay reasonable developer fees
- Make progress payments

Implementation Support

- Kickoff meeting
- Progress tracking
- Inspections
- Monitoring & TA



Wrap Up



Available Resources

- CHDO Staff Capacity & Organizational Capacity Checklist—
Program Year 2012 CHDO Funding
 - Excel file & Notes in PDF
- CHDO Survivor Kit
- “Operating Guidance for Implementing FY 2012 HOME Appropriation Requirements” (CPD Notice 12-007):
<http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/notices/#2012>