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Consolidated and Further Continuing Appropriations Act of 2012 Webinar Series
For CHDOs: Understanding the CHDO Capacity Requirement

Transcript

July 12, 2012
1:00 PM EDT

Note: This transcript does not include the Q&A portions of the webinar. HUD will be posting additional written guidance in the form of Frequently Asked Questions (FAQs) that address both questions addressed in this webinar and others that were not addressed due to time limitations. Those will be posted to the www.hometa.info website as they become available.

Minor corrections to the transcript have been made to reflect HOME-program acronyms, inaudible portions of the recording, and the like. In some cases a word or phrase has been inserted or corrected for clarity, it is indicated by italicized brackets like this *{inserted/clarified language}.*

Tashona: Good afternoon. My name is Tashona and I would like to welcome everyone to the For CHDOs: Understanding the CHDO Capacity Requirement Conference Call. All lines have been placed on a listen only mode. As a reminder, today's call is being recorded. I would now like to turn today's call over to Steve Lathom from Training & Development Associates. Thank you Mr. Lathom, you may begin your conference.

Steve: Thank you very much Tashona, and welcome everyone to the CHDO Webinar: Understanding the CHDO Capacity Requirement. This is a piece of a series of webinars being done about the Consolidated and Further Continuing Appropriations Act of 2012. Isn't that quite the mouthful? In essence, this is the Budget Bill that funded the HOME Program and a great deal of the rest of the Federal Government last fall. Today is the last in a series of eight webinars about this fiscal year 2012 HOME Appropriations Law Requirements as we are referring to them. We're going to hear a little bit more about them from HUD in a moment, and talk to them quite a bit today.

There have been seven prior webinars, including one earlier this week that talked about the same topic in terms of us talking to the participating jurisdictions. Today is a sister webinar to that one earlier in the week where we're talking to you as CHDOs. It's very much the same material, but just from a little bit different perspective. We know that the CHDOs have not been on these calls quite as much, and so we would like to let you know that all of these prior webinars have been recorded and are available on the www.hometa.info website. You can listen to the recordings. You can see the prior presentations. And you should be able to see the transcripts. The one from earlier this week probably does not yet have the recording and transcript up. But all of the others have recordings and transcripts up, and there are also supplementary materials in many cases.

We will take some breaks today to answer questions, and we want to let you about two things. First, we expect more questions than we're going to be able to get to today. It's been our experience on all of these webinars. And so we've actually built into the process the plan to develop written frequently asked questions, based on those questions that are coming in, and based on the questions that we don't get responded to. Those will come out later. They'll be posted on www.hometa.info, and you'll have an opportunity to see additional clarification of some of these things.

Also today, we're not going to be taking questions over the phone in the way that we've done on some of the prior webinars. We're actually expecting probably a little bit higher call volume than we've had. And we're only going to do the questions submitted electronically through the web meeting clients. So those of you who were on a little bit early saw the instructions, but let me just walk you through very briefly. At the top of your screen if you're looking at the internet right now, you should have a Q&A menu button. If you click on that, you'll get a drop down menu and you'll be able to type your question into the box. We'll see that and will be able to hopefully respond to as many of those as possible. We would encourage you to submit your questions at any time today, and not necessarily wait until we get there to the Q&A to start typing in your questions. And one other thing about that is again, we'll take a few questions today, but we won't get to all of them and just watch for those frequently asked questions. Again, please submit those at any time.

With that, again I'd like to thank all of you for joining us and let you know some of the other folks that you'll hear from today. Joining us from HUD headquarters are Ginny Sardone and Laticia Jefferson, both of the Office of Affordable Housing Programs. I think Marcia Sigal is going to be unable to join us today. There may be a few other HUD staffers, and I'll let Ginny introduce those folks in a few moments.

Again, my name is Steve Lathom. I'm a Project Manager with Training & Development Associates. We're one of HUDs providers of training and technical assistance. I'm really pleased to be joined today by Monte Franke of the Franke Consulting Group. Many of you, who have been in the Program for a while and have been to trainings across the county, have probably seen him on the training circuit. I am really glad to have Monte joining us in this effort.

With that let's briefly talk about the agenda, and I'm probably going to preview one of Ginny's points a little bit and at least acknowledge the position we find ourselves in the HOME Program. Today we're talking about some changes that are coming to the Program through the Appropriations Act of last fall. We know there's a lot of confusion out there, because there's a lot of change going on. We have the proposed rule, the current rule, and new CPD notices that have come out. There are just a lot of changes in the environment in which the HOME Program operates. But I think it's really important for us to note as we get started, and you'll hear us say this at several points today, today's session is not about the proposed rule. Everything we're telling you today are things that PJs have to contend with now, and that are based on the current regulation and on the Fiscal Year 2012 statue.

As we've also noted, today's session is somewhat different than the prior webinars about the FY2012 Statutory Requirements, because most of our focus in the previous webinars has been talking to PJs to help them understand the requirements they have to incorporate into their local programs. And today we're talking to you as CHDOs, who are once removed from the direct oversight of HUD. It's not that HUD doesn't know about you or doesn't care that you're there, but the structure of the HOME Program is that HUD deals directly with Participating Jurisdictions, or PJs. And the PJs in turn are the ones that deal directly with you and with other program participants. So our primary goal is to help you as users of the Program understand the new requirements that are starting to filter down to you. And unlike many of the PJs who participated in several of the prior webinars, many of you are listening for the first time today.

So we'll start with a brief overview of the FY2012 HOME Appropriations Law Requirements. Our focus will mostly be on the so called, "CHDO Development Capacity Requirement," but we'll also talk about some of the other changes imposed by Congress that will have impacts on your organization. We'll talk about the practical impact of these requirements, especially on the types of questions PJs will be trying to answer about you, and the documentation they'll be asking from you to help them show that they're meeting their obligations to HUD. Finally as I mentioned a minute ago, we know it's a difficult environment within which to operate. And many of you to be frank as CHDOs aren't necessarily feeling the love right now. We can't necessarily fix that today in a single webinar, but we will talk later about how CHDOs can not only survive as we go through this period of change, but come through it stronger. So Monte will have some tips for you about how to think about your capacity holistically, how to leverage some of the special assistance that is available to CHDOs in the HOME Program, and how to make the case to your local PJ for accessing these resources in ways that build capacity moving forward. Again as we've noted, we'll take breaks at a few points in the presentation to address questions, and we'll use some time at the end to take additional questions. But please feel free to submit those questions at any point as they come up. With that, I'd like to turn it over to HUD for a moment to talk about the legislative and regulatory context out of which this requirement comes. Ginny are you ready to go?

Ginny: I am thank you Steve. Welcome everybody. Good afternoon. We're glad that you could join us for this webinar today, and we're really happy to have two of the foremost experts on the HOME Program and on assisting CHDOs, Monte Franke and Steve Lathom with us today to conduct the webinar. Steve has addressed a lot of this so I'm not going to spend a lot of time on what has brought us to this point, but I will just mention as I'm sure many of you know, there were a couple of Congressional Hearings on the HOME Program last year. And there have been a number of follow-up meetings between HUD's staff and Hill staff since that time. There are a handful of things that Congress has expressed a great deal of concern about with respect to HOME Program performance. And one of those things is CHDO capacity, and a large amount of unexpended CHDO {set-aside} funds that remain in federal accounts. Congress is very concerned about insuring that CHDOs and other developers, but CHDOs in particular, have the capacity to insure that projects are done and done timely. So we find ourselves with these requirements in the 2012 Appropriations Act, which is the reason that we're all here today.

As Steve mentioned, there are also requirements that are similar, but not exactly same in the proposed rule, and we're currently working on a final rule. But the purpose of our webinar today is not to address anything that's in the proposed rule. We're not really prepared to do that. You all need to stay tuned and wait to see what comes out in the final rule, which we expect will be published this fall. So I'm just going to say that to the extent that we get questions that are really proposed rule questions as opposed 2012 Appropriations questions, you may find that we'll just respond back to you that this is a proposed rule question and that you should submit it to HUD through the Field Office if you feel that that's necessary.

It's really important that we do everything that we can to first of all make these provisions work for CHDOs, build capacity where we can and insure that projects are done and completed timely. That's really what Congress is attempting to do here. It's the "Law of the Land" as the slide mentions, so please take the opportunity to ask any questions that you have. If you have concerns, you can certainly talk to your PJ; have your PJ talk to the Field Office about how these provisions may apply to your particular situation. So with that, I'm going to turn it back to Steve.

Steve: Okay thank you very much Ginny. I think again just to remind everybody, I know we've hit on a few points, but we can't talk about the proposed rule today. And we really are focusing entirely on requirements that come from the current regulation and from the statue that was passed last fall. Just one other thing, HUD can't actually even tell us about the proposed rule at this point, just given the rule making requirements that are in place. So we don't want you to feel like they're dodging those questions. It's just an explanation. They're actually legally prohibited from talking about this during the point they're in in rule making.

With that I want to do one other quick housekeeping thing, and that is to let you know that there are some handouts and some downloads available. Those of you who were on early saw the instructions about how to get at those. But let me remind everybody, in the upper right corner of your screen, there's a little icon that looks kind of like three sheets of notebook paper. If you click on that, it will open a dialogue box and you can download several different handouts or attachments that are available to you today. That includes hard copies, or PDF copies as it were, of the presentation itself. It includes a checklist that's exactly what we provided to the PJs earlier this week as a sample of something they can use to help document their reviews of your organization in their file. And there's also a copy of the CHDO survivor kit that you're going to hear Monte talk about. So we think that those are all the things that you might want to take the opportunity to download. They're also available on www.hometa.info, and you'll have access to those afterwards. With that as we get into the heart of the presentation today, I'd like to start by briefly covering the overall Fiscal Year 2012 HOME Appropriations Law Requirements. Even though we're focused on the CHDO Capacity Requirement as it is being called, all of these requirements will end up affecting you as CHDOs or as participants in the Program. Again as I mentioned a few minutes ago, all of the prior webinars where we dealt with these other requirements in greater detail are available online. You can go back and listen to the recordings, read the transcripts, and see the presentations.

There are two new requirements this year that can best be described as performance deadlines. They include a requirement that any HOME activity, including those carried out by CHDOs and those carried out by other sorts of developers like For-Profits or those carried out directly by the PJ, be completed within four years of project commitment. Projects that aren't completed within this deadline are going to be deemed cancelled, and the PJ will have to repay all of the HOME funds invested in those projects, which likely means that the PJ will be asking you if your organization is the developer of one of those cancelled projects, to repay those funds. There is a limited ability for HUD to grant the one-year extension to this deadline in certain extraordinary cases, but that will be a pretty limited thing. This deadline is likely to lead a lot of PJs to change their processes to delay when they make those formal commitments to a project, to make sure that a project is fully put together before making that commitment, since that starts the four-year clock.

The other new deadline relates to the development of For-Sale Housing with HOME funds. Those homebuyer units must be sold within six months of construction completion. If not, they have to be converted to HOME rentals. And if you can't convert those projects, the PJ is going to have to repay the HOME investment. This will affect CHDOs doing homebuyer development in several ways, not the least of which is that you're going to see a greater emphasis on your marketing plans and the PJs review of those marketing plans, whether or not you have presales, and in terms of the PJ looking to see if you have the capacity to manage these units as rentals if they're not sold on time and have to be converted to rentals. So while that's not our specific focus today, it is worth noting that these different requirements will affect what's going on with you, in particularly, if you're going in for a For-Sale Housing project, your PJ may be looking at you not only from a capacity standpoint of being able to do For-Sale Housing, but also are you able to manage rental if need be. And that's a very different skill set in many cases. So both of these deadlines will be on the minds of PJs and when they approach the next requirement from Fiscal Year 2012.

PJs now have to explicitly certify to HUD at the time they set up a project in HUDs data system, that they have completed a three-pronged assessment of every home development project. The PJ must assess the neighborhood market to determine the proposed project is needed. They have to evaluate the developer's capacity to undertake the project, including a review of the fiscal soundness of the developer. And finally, the PJ has to underwrite the project, reviewing the overall financial projects to insure the project is likely to succeed, or not overinvesting home funds in it. We'll come back to this point a few times, but as a CHDO doing development, this requirement applies to you as well. It's a requirement applied to all development projects, whether the developer is a For-Profit, a Non-Profit, or a CHDO.

Finally, the last new requirement and the one that is our primary topic for today, is specific to CHDOs. It's being called the CHDO Development Capacity Requirement, but as you'll see, the focus here really is on the development experience of the CHDO staff. So in a few moments we'll dig deeply into that requirement and talk about the implications to your organizations.

I may be getting a little ahead of myself though, so I'd like to take a minute and make sure we're defining some key terms that will be used a lot today. As one of my colleagues likes to say, "Words have meaning." And within Federal Programs, and in HUD's defense, this is not just a HUD thing, that's especially true. We also find that especially at the CHDO level or even the For-Profit developer level where you're one step removed from that direct relationship with HUD, sometimes we get a little careless in our use of terms. So let's make some careful distinctions. We'll talk a fair amount today about CHDO Designation. As we'll see in a minute, this is the end result of a process carried out by local PJs, where the PJ reviews aspects of your organization to determine if it meets the HOME rules definition of a CHDO, the Community Housing Development Organization. In HOME, this is an important step. You have to be designated as a CHDO before you can receive funding as a CHDO. But it's also just a starting point in many ways. It doesn't actually entitle you to any funding or to any other particular benefits that are available to CHDOs.

I know I'm reversing the order of the slide here, but let's talk about Commitment next. In the HOME Program, a Commitment has a specific meaning, especially when we're talking about a project by a developer. It means that the PJ has entered into a legally binding agreement to provide HOME funds to a specific project, and that that project is expected to start construction within twelve months. At the Commitment stage, the PJ needs to also insure that various compliance reviews have been completed, including things like environmental review and subsidy layering. And now under the FY2012 Requirements, they have to complete that project assessment, including underwriting, market assessment, and developer capacity review.

CHDOs on the other hand, can receive a Reservation of funds. In a lot of ways a Reservation is squishier than a Commitment. At the Reservation stage, a PJ can reserve funds for a CHDO without being able to specifically identify the exact project that will take place. And the written agreement in that case is not as firm. It doesn't have to be legally binding, in part because it's a lesser threshold, one that allows a CHDO to get an earlier promise. I don't want to use the term Commitment, but a promise of funding that can in theory help the CHDO leverage other funding to put the project fully together. So as we'll see later, Reservations are somewhat less specific in many cases, often promising HOME funds to a development project that's yet to be identified by the CHDO.

Finally, you'll hear us talk about various certifications. When your PJ sets up either a Commitment or a CHDO Reservation in HUDs data system, which is known as IDIS, the Integrated Disbursement and Information System, they have to make various certifications to HUD. These are essentially an electronic version of the PJ making a sworn statement, raising their right hand and attesting to the fact that the PJ has met certain key HOME Program requirements. For purposes of the new FY2012 Requirements, those include the Project Assessment Certification, swearing that they have reviewed the market, assessed the developer's capacity, and underwritten the project. And when it comes to a CHDO project specifically, the PJ has to swear that it has determined that your organization has staff with appropriate development experience. So as we move further into the requirements about CHDO capacity, I think it's helpful to have these terms straight, because as we'll see, there are actually overlapping requirements and expectations about CHDO capacity that come into play at various stages of the overall process.

As Ginny told us a few minutes ago, we're focused on the FY2012 HOME Appropriations Law Requirements. And today that's the CHDO Development Capacity Certification. For your reference, the PJs have seen what's called CPD Notice 12-007. That's the implementing guidance that comes with the HOME appropriation statue from last fall. You can certainly download that as well. But for that reason, we want to start out by talking about the various perspectives on the issue of CHDO capacity. Remember, the proposed rule doesn't exist for our purposes today, even though we know it's on many of your minds. And perhaps even more so on this specific topic based on the amount of discussion that we sometimes hear in the field.

So we're going to start by doing a brief review of the existing HOME Rule, the regulations that are in place, and have been in place for more than fifteen years. We'll see that the HOME Rule as it stands today, along with the CPD Notice 97-11 which has been around for some time as well, still govern the definition of a CHDO and the criteria by which a PJ designates an organization as a CHDO. From there we'll talk about the new requirements that come out of the FY2012 HOME Appropriations Law, and specifically the CHDO Development Capacity Certification, including when it applies and when it doesn't. There are really two levels of capacity assessment that we'll try and touch on. A requirement at the time the PJ reserves funds to your CHDO that can actually be a little bit more general and a much more specific review at the time an actual project commitment is made.

Finally, we want to talk about some broader perspectives, or some best practices that we see some PJs implementing. Many of which have been promoted in HUD trainings and publications for quite some time now. When we talk about these with PJs, we encourage them to step back and try to take a more holistic or comprehensive view of CHDO capacity. And today as we're talking to you as CHDOs, we want you to understand where the PJs are coming from. With the issue of best practices, it raises another point that you'll probably hear us say at a few points today, and that we want to make sure that we draw out. That is that HUD and the HOME Rule provide a basic framework within which participating jurisdictions operate. But PJs also have a lot of discretion to design their programs, their local policies and procedures, as long as they meet these certain minimum requirements. In some ways for those of you that are sports fans, it's kind of like designing a baseball stadium. The distance between the pitcher's mound and home plate, or the distance between the bases is the same in every major league ballpark. But the shape of the outfield and the distance to the outfield fence can vary quite a bit. So while we're talking about HUDs expectations for PJs, what those local governments have to do as they manage the Program, in some cases we can talk about the likely implications for how these expectations flow down to you. But your mileage will vary as each local PJ has discretion in how they design their local processes. And many of them will add additional requirements or restrictions that go beyond the minimum expectations of the HOME Program. And not only is that okay, it's actually a part of how the Program is supposed to operate. But it's an important caveat for you guys to hear today.

So with that, let's start with a brief review of the existing criteria for designation as a CHDO. All of these are driven by the current rule in the definition section found at 92.2, and this is where this thing that we call a CHDO gets defined. Some of the more proforma criteria include expectations about your organization's legal structure. To be a CHDO, you need to be organized under state law, you need an appropriate IRS designation, and you need to be an independent organization. There are also some base criteria about your general purposes. An organization that wants to be a CHDO needs to exist, at least in part, to provide affordable housing. And to be a community housing development organization, you need to actually be serving a specific geographic area or a defined community.

From there, several criteria relate to your organizations governance, and their expectations about who's on your Board. At least one-third of your Board needs to be low-income individuals, residents of low-income neighborhoods, or low-income neighborhood representatives. The other common rule of thirds is that no more than one-third of the Board can be public employees or officials. There's also a similar no more than one-third screen that applies if a For-Profit entity gets to a point any of your Board members, though that's typically quite a bit less common. CHDOs also need to have a formalized process for getting input from the low-income residents they serve, and there are basic financial accountability standards that have to be in place.

Finally, where we're focused today, to be designated as a CHDO in the first place, the current rule already requires a PJ to review your organization's capacity and experience. An organization needs to demonstrate at least one year of experience serving its community and it has to have "demonstrated capacity" to undertake HOME funded projects. We'll dig into that demonstrated capacity notion in just a second, but there are two other background points to cover as well. First, being designated as a CHDO is something that happens entirely within the context of the HOME Program. CHDOs are defined by the HOME Rule, and while there's one small cross reference in the CDBG regulations, being a CHDO only has regulatory meaning within the HOME Program. So from HUD's standpoint, there's really no reason for an organization to seek CHDO designation unless you're going to be developing housing with HOME funds.

And that brings us to the next point. A CHDO is only really a CHDO when you're doing development. That means you acquire and construct housing, it could be through rehab or new construction. And that you'll make the housing available to low-income households, either by selling it to them, or by renting it to them. I know it's actually axiomatic, but you're only a CHDO when you're acting as a CHDO and when you're doing a HOME funded development. Many of you also participated in the HOME Program with other hats on, the most common being as a sub-recipient to a local jurisdiction. Perhaps you're running their local Down Payment Assistance Program, or their Homeowner Rehab Program. It's perfectly appropriate, but in those cases you're acting as a sub-recipient and not as a CHDO. That brings a different set of rules and regulations with that different status.

So as we're talking about CHDOs, we're talking about you acting in a development capacity. Let's dig into that specific capacity requirement in the existing rule in greater detail. If you were to look right at the language in the existing HOME Rule, to be designated as a CHDO, an organization must have "demonstrated capacity for carrying out activities assisted with HOME funds." The rule goes on to provide two paths by which that capacity can be demonstrated. Either the CHDO can hire experienced staff that successfully completed similar projects, or you can hire a consultant with the same type of experience who can help complete the project and train the staff. A lot of people have expressed concern that the new statutory language from FY2012 changed the requirements. I think it's helpful to look closely at the actually text of the current rule, and we can see that the foundation of this staff capacity requirement already existed. There are two elements here that at least preview some of the issues we're talking about today and that the FY2012 Requirements bring into sharp focus.

First the existing rule implicitly expects that CHDOs will have staff. And second, the rule requires experience with projects that are similar to the type of the project the CHDO is now planning to take on. The current rule of course does provide some flexibility at this designation step. If a CHDO doesn't have staff with the needed experience, there's been an opportunity to build that capacity with training from an experienced consultant. But even there, the implicit idea is that there are staff that will be trained by the consultant, not that the consultants will be around forever. So when we talk about the FY2012 HOME Appropriations Law

Requirement for staff development capacity, for those who think this is something altogether new, it really isn't. It's just now the focus on CHDO staff is more explicit. And now some of the PJs who may not have been fully accounting for this before, have to bring their practices into line.

So let's look at the language in the implementing notice that PJs are working from, again that's CPD 12-007. It says pretty straight forward, "PJs may only provide FY2012 HOME funds for development activities to CHDOs that have demonstrated that they have staff with demonstrated development experience." From that starting point, let's talk about several other issues that break that apart. We need to talk about the definition of CHDO Staff, and we'll come back to talking about the context of course in which the PJ makes that determination. And of course we're going to start here with the applicability. Again, for the point of the 2012 Requirements, this capacity assessment is something we're going to talk a lot about, because it needs to be made in the context of the project actually being funded. There's an emphasis on the size, scope, and complexity of the project. It's more rigorous in many ways than the generic capacity demonstration that most PJs have been making for purposes of that earlier CHDO designation.

Finally, as we move into this discussion, I want to remind everyone again that we're talking to the framework and the advice that we provided to PJs earlier this week. But each PJ has to develop its local policies and procedures. In some cases they'll expand on these requirements or add to them based on their judgment and their local experience, and that's okay. It is okay if your PJ wants to expand the applicability of this perspective or to narrow further the definition of staff compared to what you hear us say in just a minute. You still need to meet those local requirements. One of the other things we spend a fair amount of time on with the PJs is the applicability of this requirement. This requirement applies anytime a PJ reserves funds from the FY2012 CHDO Set-Aside. Again, this applies to all CHDO reservations. Remember a Reservation sometimes is not project specific. It applies to those reservations, and it particular applies once that project's specific decision has been made. So as we'll talk more about a few times, it can be kind of hard for a PJ to make that determination if the local process at this point has been to be reserve funds for a CHDO on a generic, "Bring me a project eligible" sort of way without a clear idea about the type, the scope, and the character of the project that they've been reserving funds to you for, even if you don't yet know the exact address. There are some places that this technically doesn't apply, but remember PJs may be more restrictive in these minimum requirements. So in some cases, you're likely to see that PJs start applying the staff experience perspective across all of the projects with CHDOs, instead of going through a lot of brain damage to make subtle distinctions about when it has to be done, and where it isn't technically required. Some of the key places this doesn't technically have to apply is the award of CHDO operating funds when a CHDO is acting as a sub-recipient to run a non-development program for the PJ like homeowner rehab, and when a PJ is making reservations from a prior years CHDO Set-Aside. Some PJs are still using up money from 2011 for example.

I think Ginny may have indicated this earlier, but what we've heard is that so far Congress is indicating that it intends to continue to put this requirement in future Appropriations Bills, unless and until the rule updates, however they get worked out in the end, fundamentally address the same issues in a more permanent fashion. So we can't really just hope that these requirements turn out to be a one-time thing for Fiscal Year 2012 or a short-term thing until we get back to normal. This focus on capacity and program performance really is the programs new normal.

As we begin to talk about staff, if a CHDO has to have staff with demonstrated development experience, we first want to be clear about what HUD means by staff. The Notice that PJs have to work from provides a straight forward and direct explanation, "HUD defines CHDO Staff as paid employees who are responsible for the day-to-day operations of the CHDO." They go on to say who specifically does not count as Staff. That includes volunteers, board members, or consultants. One of the first things to clarify here is that paid staff can take on a few different forms. We're not always talking about an employee from an IRS standpoint of how the person is paid and who pays the payroll taxes. We can also be talking about full-time or part-time staff. So for some of you on the call today who are from smaller CHDOs where you may have a part-time staff member or part-time Development Director, that can be adequate given the level of production, maybe you're only doing two or three units a year, as long as your PJ determines that that staffing level is adequate in light of the size, scope, and complexity of the project involved under their local guidelines. HUD is also not trying to get wrapped up in all the different forms that employment takes on in this day and age. So a CHDO that uses a contractual employee format where a staff person may be treated for IRS purposes as an Independent Contractor and receives a 1099 and pays their own payroll taxes, that's okay too. I suppose there might be other types of arrangements out there as well. For example, one of my neighbors works at the American Cancer Society. If you've ever done a Relay For Life Walk, she's probably the one that designed the official t-shirt, the water bottle, or whatever sort of memorabilia you left the event with. But while she was chosen by, hired by, and works exclusively for the Cancer Society, for IRS purposes she's an employee of Kelly Services. So the point here is that there are really a lot of different forms that employment takes on, and HUD is accommodating that reality today.

But while we have flexibility with the tax status of who's an employee and who isn't, that leaves us with a little bit more subtle work to do in defining an employer defining staff. Because as you see as we walk through this slide and the next, one of the points that a lot of people have been confused about or tripped up over is trying to make a distinction between these sort of non-traditional contracted staff as it were, who may not be employees from an IRS standpoint with consultants. In order to develop their local policies, a lot of PJs have been asking how to distinguish between a contracted employee and a consultant. So while PJs will each make their own decisions to some degree, here's some of the prospective we've shared with them. First we talked about paid staff as again, responsible for the day-to-day operations of the CHDO. One of the ways that PJs might distinguish between a staff person and a consultant is whether or not that person has organizational duties beyond just the project at hand. Do they do the overall bookkeeping? Do they do fund raising? Another critical distinction between a staff, employees, or a consultant, might be the level of authority they have to act on behalf of the organization. Generally, staff is the one that can approve contracts, change orders, and approve income eligible buyers to buy the house, because they're acting on behalf of the agency as a whole. Finally, when you look at the overall Development Team, and Monte's going to talk more about Development Team later, consultants are the ones who are team members, but staff is the one who actually manages that team.

Who doesn't count as staff, particularly for purposes of the 2012 Certification of Staff Capacity? Again, the Notice is very clear, saying that volunteers, board members, and consultants are not staff. This doesn't mean that CHDOs can't or shouldn't supplement your staff capacity with expertise from volunteers or board members. We even encourage you to do that later, and during Monte's section of the presentation. You can always learn by having those experts on your board or having those experts at your disposal. Likewise, sometimes knowing that you need additional help on a project from a consultant or from a volunteer can actually be a sign of some capacity. The point is that the board members or consultants can't be the only source of development capacity. Congress and the FY2012 Appropriations Statue clearly want to see the core development capacity as coming from the CHDOs actual staff.

So let's go back for a second to that pesky distinction between CHDO staff and consultants. Again in some ways it would be a lot easier if we only had to look at the tax status or relationship, if we could say, "Unless you get a W-2 from the CHDO, you're not staff." But HUD I think has properly allowed flexibility to deal with the range of employment relationships that we see today. But that still leaves us trying to articulate, "How to identify consultants?" So some of the things we suggested PJs to consider in their local policies is they identify the role of the consultant is if the contract with that person is project specific, time limited, or limited to technical tasks without general organizational responsibilities, they're probably a consultant. If the level of authority that person has is limited, if they can't make a decision on behalf of the agency, but provide advice and then somebody else in the CHDO has to make the decision, there's a good chance that they're a consultant. So again, that's some of the perspective that we shared with the PJs earlier this week.

Finally another issue that we want to discuss, because I know it's been a topic of a lot of conversations, has to do with this notion of shared staff, where a CHDO shares its staff or is staffed by with people who may be employees of a different parent organization. There are a lot of categories out here. Sometimes with some of you on the phone may be a subsidiary of a multi-service parent organization, where that CHDO or the housing development activity has been walled off for liability purposes. This could be a Community Action Agency, a spinoff from an Urban League, or a United Way in some cases. There are also a lot of examples of National Non-Profits with local affiliates, where the local organization may obtain some of its staffing from a larger regional or national entity. Volunteers of America and Habitat of Humanity are two good examples that come to mind here. Again a reminder that today is about the existing rule. But perhaps the stickiest issue because of the attention that's been paid to it in the Proposed HOME Rule is around staff that is shared with a public entity like a Public Housing Authority or even a local unit of government. Remember though that today's discussion is all about the existing rule. We don't know and HUD can't legally tell us where they're at on this issue in the proposed rule.

So for today's purposes in determining whether a CHDO has paid staff with demonstrated development experience, all of these different parent-subsidiary relationships are potentially acceptable. But again, this discussion assumes the CHDO is in fact properly designated by the PJ as a CHDO within the existing rules. And regardless of the parent or subsidiary structure, the shared staffing relationship needs to be formalized. So while different PJs may develop slightly different policies around this for those of you in your situation, your PJ is likely to want to see that agreement and see that it includes things like who specifically is being assigned to the CHDO entity, because those specific individuals are the ones that we're going to look to for staff experience, the services being provided by the parent entity to the CHDO, and how those services are being paid for between the CHDO and the parent. So those are some of the things that you're likely to see PJs asking you to talk about.

We've talked a lot so far about the technicalities of when this requirement applies and when it doesn't. But from a subsidentive standpoint, it's really about getting funded for an actual and a specific project isn't it? There may be a few different paths that local PJs take, especially if they continue to make generic reservations for you that are not project specific. But the ultimate end game that you're after is getting a project specific commitment and accessing HOME funds for development. To cross that line your PJ is going to have to determine per their local policies and procedures that the organization has paid staff, that those specific staff people have demonstrated development experience, that their experiences with projects of a similar size, scope, and complexity to what you're now proposing, and that the other and in some cases broader requirements of the existing rule and the FY2012 HOME Appropriations Law Requirements have been met. In particular, the PJ will need to examine the neighborhood market conditions, they will need to have underwritten your project, and again assess the overall capacity of your organization as a developer, including your fiscal soundness. It's got to be something that goes beyond just the knowhow of the staff involved.

So we'll stop in just a second for the first round of questions, but I want to spend a brief second touching on the implications of these changes for local funding processes. Again I'll remind everybody to take this opportunity if you have a question to go ahead and type it in now instead of waiting until we're into the Q&A. These new requirements and not just the CHDO capacity requirements, but all of the FY2012 requirements are leading PJs to have to reassess how they solicit, select, and oversee projects. How exactly things change for you on a local level will depend on your local PJ. How is chooses to implement these requirements and also to some degree which best practices that are similar that it's already been implementing in the past. There are some general themes that you might start to see. For example, many PJs are moving away from the concept of generic CHDO reservations that basically say, "Here's some money. Go find a good project," and moving towards making project specific commitments. Early in the HOME Program when we were still trying to figure out what a CHDO was, it made sense to let PJs use reservations while they worked with CHDOs to put a project together. The reservation concept gave PJs some flexibility to meet their overall program commitment deadlines. But as Congress and the public broadly speaking paid more and more attention to capacity and ultimately determine their performance, most local programs are making that shift too. We also see a lot of PJs, especially larger PJs, in state programs that run competitive processes for CHDOs seeking development funding. And those competitions are often based on or at least provide a lot of points for demonstrated capacity to perform on time and on budget. Similarly, even for PJs that don't have highly structured competitions, many are starting to incorporate project feasibility earlier in their funding decisions. Or, waiting to make a reservation until a CHDO demonstrates not just the capacity requirement, but also that you've put together enough detail about the project for the PJ to really assess. So if it's a project that's likely to succeed, versus an idea that might get stalled out.

Finally, in some cases PJs are defining the projects they want to see, and then seeking developers through more of a RFP type process, rather than just offering funding to CHDOs that can bring a project that you've decided you want to do. Monte's going to talk more in a minute about the things you might see in the local application and funding processes. And we'll also talk later about the case that you can make to leverage some of the special considerations in HOME for CHDOs to expand your capacity. But as we move into the first break, we just want to get you thinking more broadly about some of the other downstream changes that you're going to see beyond just the technical stuff that this requirement brings for the PJ to be able to check the right boxes. So with that, what I'm going to do is to turn this back over to Ginny in just a second for questions. But I would remind everybody, please submit your questions at any time. And to do so, we're only taking written questions today. Click at the top of your screen at the Q&A menu. There will be a box that drops down and you can type your question in there. So with that, Ginny, do we have a question to take?

Note: This transcript does not include the Q&A portions of the webinar. HUD will be posting additional written guidance in the form of Frequently Asked Questions (FAQs) that address both questions addressed in this webinar and others that were not addressed due to time limitations. Those will be posted to the www.hometa.info website as they become available.

Steve: Okay great. What we'll do then, is I'm going to turn it back over to Monte. We will encourage everybody again to keep those questions coming in. We apologize that we can't get to all of them. Some of course will get covered in the FAQs, and some you'll get referred back to your local PJ or to your Field Office. So with that I'm going to turn it over to Monte, and we'll go into the rest of the presentation for the time being. We'll come back for more questions as well.

Monte: Thanks Steve. Hi everybody. How are you doing today? Good afternoon to most of you, and those on the West Coast, good morning still. I looked through the names that are on the attendee list, and I recognize a lot of the names. Some of you might be using aliases, but I recognize a lot of them and I welcome you again. I know we've had chances to talk over the years about the challenges of being successful as a CHDO. And we have to talk about more of those challenges today as a result of the Appropriations Act. Your PJ is going to have to respond to the 2012 Act Requirements, and will have to analyze and document some staff experience, as well as assess overall capacity. As Steve said earlier, we can't tell you exactly how and when in the process your PJ is going to conduct this analysis. What we do know is that they will need to look at enough information and analyze your capacity to be comfortable making the certification that Steve alluded to. So I can't give you an exact, "Here's when the PJ will ask you.

And here's what they will ask you for. And here's how they will look at it." It's going to be up to them, and you're going to have to work with them to find out how they're going to respond to this.

But let's dig a little deeper into those requirements that Steve covered, and talk about how a PJ might analyze a CHDO and its staff to meet these requirements, and also how it might document that analysis. It will help you to anticipate some of the things they might have to ask you as they move into their 2012 reservations of CHDO funds. Steve mentioned earlier downloads that we've provided. You can reach up at the top right of your screen under the three notebook sheets, and we do have a capacity checklist. And a key to that that we offered to the PJs in the webinar the other day as something they could begin to look at as questions that they may want to assess as they go through this analysis. It was just provided as a suggestion or as a sample and not as a requirement. But a lot of them are looking at that. For those of you who are familiar with the CHDO Tool Box and the CHDO Survivor Kit, you'll recognize a lot of those questions were in the tools that were attached to each of those looking at CHDO capacity. If you've attended any of my previous trainings, you know that's been something I've stressed all along. Being certified as a CHDO doesn't necessarily mean that you have development capacity or can do the project proposed, and a PJ has been advised to look more deeply into that all along. So this from my perspective is nothing new, although with Congress requiring it now, it will have to be universally applied by all the PJs out there.

The first thing that I want to stress is that the Notice from HUD instructs PJs that they're supposed to "Develop and implement written policies and procedures for assessing CHDO capacity, and insure that adequate documentation of the assessment is included in the appropriate files." They will have to have written policies and procedures, and we'll talk about some of the things they might put into those procedures. But of course, I can't tell you exactly what each PJ will do with that particular requirement. I'm going to be talking about the two capacity issues. They are parallel but not identical. They both have to be dealt with. The first one is the Staff Development Experience Requirement, and the second one is the Project Underwriting Requirement that includes assessing developer capacity. And we'll talk about looking at both the CHDO organization and the Development Team Capacity in that. I want to emphasis at this point that this is not an academic exercise or a paperwork step to be taken lightly. We've reminded PJs throughout these webinars and we want to remind you that under the HOME Statue in the event that any HOME project funds including CHDO funds fail to produce a completed project that meets the affordability requirements, those funds may have to be repaid. The PJ is responsible for their investments in you and your project, and they need to assess your capacity not because Congress or HUD told them to, but because they can’t afford to lose their investments that they’ve made through you. It’s a very important thing. You need to respond to their requests and take it very seriously.

Now in terms of the written policies and procedures, your PJ may already have policies and procedures that it’s followed. They may be written or unwritten, because it wasn’t previously specified how they will designate CHDOs, and how they’ll make CHDO reservations and project commitments. And yet to respond to the 2012 Requirements, they’re going to have to develop written policies that define what is eligible staff as Steve has clarified the definition of staff earlier to define what they consider to be relevant development experience, and how comparable prior projects have to be to current projects. I’ve noticed in some of the questions coming in, one of you is asking, “The CHDO is growing and becoming capable of doing larger and larger projects. Is this something that holds them back from growing into that kind of role?” That’s something that the PJ has to decide, that you have demonstrated development experience to be able to handle what you’re about to take on. And then to define what the PJs looking for in terms of the CHDO itself, and capacity in the development teams capacity. I’ll be working through those as we go along.

They have to document also as a part of this written policy what their procedures will be. And that includes what they’re going to require you to submit, what documentations are going to be required, when they’re going to do it, are they going to do it at a CHDO certification step, or at a reservation step, and when in the process are they going to make this determination? They certainly have to be able to do the certification at the reservation step, but it’s up to them to decide when and how to collect it in advance of that. Also what process they’re going to follow to review and approve the information, what basis they would use to reject, and what appeal process they would allow you to pursue if you were rejected on the basis of this capacity assessment.

First I want to talk about the Staff Development Experience Requirement that Steve introduced to you. In the words Development Experience, I put quotation marks around the word “Development,” because I want to go back to the CHDO definition of what a Development is. As you know, the CHDO Set-Aside may only be used for CHDO Development projects. They’re defined to include acquisition, construction, rehabilitation, and either operation of rental or sale of homebuyer housing. In other words, to use the Set-Aside you have to be doing Development activities. HUD looks at Development as being acquiring property, constructing {or doing} a rehab, and operating {or} selling those things that developers do. Steve’s mentioned that there are other things in the HOME Program you can do, but not as a CHDO, perhaps as a sub-recipient. Those would include Program Administrations of various sorts. The CHDO Set-Aside is reserved for Development activities. That's how the Development word is framed here, and the relevant Development Experience has to be framed.

The HUD Notice requires PJs to determine that "Current CHDO staff has experience developing projects of the same size, scope, and level of complexity as the activities for which HOME funds are being reserved or committed." This is sort of a threshold requirement at this stage. We're going to go more into the overall capacity discussion next. But it's not just simply, "Have you or have you not done exactly the same kind of project before?" For one thing, some CHDOs may be reserving funds for your CHDO before the exact project scope is known, so they have to make assumptions about what you're likely to undertake. Second, it is not designed to absolutely prohibit CHDOs from growing into doing larger deals and projects than it has done in the past. But it has to be a logical extension from the experience that you already have. So the question could be framed as, "Do you have the experience to get into the ballpark?" I guess it's the same ballpark that Steve was referencing earlier.

Remember that the PJs responsible for the HOME CHDO funds, and may have to repay if the CHDO fails. The PJ has every incentive to look beyond, "Have you done it," to whether you were timely and successful, whether you have all the specific skills needed to development a project such as managing a project team, financing, lending, design and construction oversight, marketing and sales, property management, and any other skills that might be relevant to the proposed project. Experience is only a part of the analysis. It's the threshold requirements that the statue has given us, but as we transition into CHDO capacity. Capacity is, "Do you have the skills to manage what's in front of you and to complete it successfully?" Once again, I'll refer you to the fact that we've put a sample check list up for the PJs, and it's also available for your download today. It might give you a sense of what some of your PJs will be looking at for this.

Those of you who have been in training with me know that one of my favorite phrases is, "If it isn't documented, it didn't happen." That's true of HOME and other Federal Programs. We always have that last step as the documentation requirement. The PJ will make the certification, but they have to say that they have collected and analyzed and documented that experience. So they're going to be looking for documentation. What they're going to look for again will be up to them, but we presume that if you're documenting employee status, full-time or part-time, you'll be asked to provide documentation such as payroll or other federal employment documentation like W-4s, W-2s, and things of that nature. For contracted staff, you're probably going to be asked for whatever the contract or employment agreement looks like, as well as perhaps a W-9 or a 1099 to document that this is in fact a contract staff relationship. In the situations of shared staff has been mentioned earlier by Steve, where perhaps a parent is providing staff to a subsidiary. You're likely to have the PJ asking to see some kind of a Written Agreement, an Interagency MOU, or other documents between the parent and the subsidiary or related organizations that provides specific staff and have details in it with regard to what staff are provided for what activities, what responsibilities they have, and how those staff will be paid. Again, there's no formal HUD requirement for what that agreement would look like, but it's up to the PJ to look at it and make the determination that in fact it is a sufficient shared staff arrangement.

I discussed in the previous slide that optimal experience is having done a similar project type before, whether it be homebuyer or rental. But I know that as I look out there and work with a lot of you out there, I know some of you are growing into broader development roles, doing newer, bigger different types of projects than you've done before. And some of you have been shifting from homebuyer into rental because of the softness of the market. All these things are issues that your PJ will have to deal with. There is the requirement that you have demonstrated development experience. And how the PJ helps you make that bridge to have that experience to move to new kinds of activities is something that they will have to do before they can make this certification.

I also want to note that as we move into the rest of the discussion here, I'm going to be switching into Developer Capacity issues. And that broadens it to the organization and to the development team, not just the individual staff. So far what I've talked about as Steve has said, "The {CHDO} has to have staff, and the staff has to have development experience." But that isn't the end of the question. The broader question, the bigger question that it's a part of is, "Does the CHDO have the capacity to be able to do the kind of project that it's going to undertake?" And in particular the 2012 Requirement for project underwriting requires, "PJ's to assess developer capacity and physical soundness." This is a part of project underwriting when they are committing funds to a project. So this is going to require the PJ to look at your CHDO organization and its development team. It's a related issue.

Some of you have been in my trainings before knows that one of the questions I ask you is, "Who is the developer, the individual staff person or the organization?" And if you've been in the session, you know the correct answer is both. Yes, we need somebody to manage the project, but we also need an organization to provide both the financial and management support to that person to be able to complete the development. So it is incumbent on a PJ not only to look for staff with experience, but that the organization itself has the capacity. That allows us to look beyond the staff, and to look at board, the development team, volunteers, and pro bono providers of technical services and all kinds of things in this capacity analysis.

The Act, as well as our knowledge of underwriting, requires us to look at the fiscal soundness of your organization, whether you have the financial management practices and resources in place to support the project. It also requires us to look at other things such as how you maintain relations with the community, with your PJ, local government, with lenders, and other stakeholders. All of these things are critical to a CHDO having capacity to develop.

In terms of experience, some of the things that we've recommended, and again there are more details in the sample checklist we've provided, as well as the CHDO Survivor Kit that's available for download today and ongoing at the HOME website. We've suggested that they look at whether the organizational structures are appropriate for the kind of developments. Some of you are multi-service agencies and use development subsidiaries, and single-purpose entities. Sometimes you get into all kinds of different legal arrangements and structure. It's important both for isolation of the development risks from your other resources, as well as for focus of the board that you might have an alternative organizational structure for development. They need to look at that, whether you're set up properly from a legal perspective. They also will need to look at your management structure, whether there are management practices in place to oversee development. Yes, we've got a day-to-day Project Manager or development person that we've qualified as having that experience, but who's overseeing them? What does the Executive Director oversee? What does the Board oversee? What does the Development Committee oversee, and how does it maintain surveillance of the progress of the staff in implementing that project?

We also urge them to look into what's in your Pipeline and your Portfolio? What do you have going on and are you able to take on this additional workload over and above what you already have in front of you? Does the staff have the time available to do it? Does all the staff have all the needed skills, or do the skills need to be supplemented by partners, consultants, and other team members? Does the Board have the capacity to oversee? I see that a lot of the questions have come in about Board composition, and the low-income components of that. Yes, that's the requirement in the CHDO part of the Statue and in the Regulations that you have at least one-third low-income representatives on the Board, but there's a whole bunch of the rest of the Board that's available to people who have development skills and experience. We want those professionals on your Board to bring both business and development skills to the CHDO, and provide the proper oversight that's needed. Board capacity is a critical element in overall CHDO capacity assessment.

And then there are project specific skills that pertain to whether you're doing homebuyer or rental units, whether you have the knowledge, experience and capacity to handle the sales process, or whether you have the in-house ability to do property management or the ability to oversee an external property manager. All of those kinds of things would come into play as well. Again, I'll just refer you to the checklist and the survivor kit for discussions of some of those issues.

It's not just about the organization itself in terms of the capacity analysis; it's also about the development team. I'll say it this way as I say it in all of my trainings, "Development is not a one person job." I'm sorry, but the development experience threshold that the statue has placed on us is not enough for us to determine that you can pull off a project. I've never met anybody that can do a whole development by themselves. We need a team of professionals. We need a bunch of technical skills, and I'm not just talking about contractors and architects, but all those other professionals, attorneys, accountants, marketing experts, property management staff, and other technical specialists that we have to assemble. The developer assembles the team and oversees the team. The team they bring together is absolutely critical. Do we have the right team members? Do you have a need for a partner or a consultant to help you fill all those functions and oversee all those functions? Again, you know under the CHDO Requirements the CHDO has to be in control of the project. You can have partners, but you're the managing general partner. You can bring in consultants, but you still have to have the basic skills. Because we require you to have development skills in no way implies that you can't bring in people to help you. There may be times when you've got a development workload that is sufficient that you need to help just managing that workload. These are things that a PJ needs to look at when it's making a commitment to you for on a specific project. Do you have the team assembled to help you get the job done?

Also when that team is pulled together, does the team have all the right relevant experiences? And, has the team worked together before? Teams can sometimes not cooperate, and that's one of the risk factors that an underwriter looks at. If a team has worked together before, and we know each other and have successfully completed projects together, that's an important positive in looking at this capacity analysis. So that's the capacity question, but the other part of the phrase that came from this Statue was Fiscal Soundness.

Fiscal Soundness is a term that we need to interpret and to define with a couple of cornerstone issues. The first one is Financial Management Systems; the ability to manage the financial of the development is one of the key sets of skills that you need to be successful in development. I want to go back for a moment. I know we're not talking about the CHDO Requirements that are in the existing regulations, but I have to. You are required as a CHDO to meet the requirements and the regulations at {24CFR} Part 84, Section 21. To meet these standards, you've got to be able to comply with the seven things that are listed there just in paraphrase. You've got to be able to provide accurate current complete disclosure of the financial results of each federal project or program. You've got to be able to maintain records that identify adequately the source and application of funds for federal activities. You have to safeguard all assets, and insure they're used solely for authorized purposes. You have to be able to produce a regular comparison of outlays against budget amounts for each award, and relate those outlays to performance and cost data. You have to have written procedures to provide for minimizing the time between the receipt of federal funds and the issuance of payments. You have to have written procedures for determining the reasonableness, allocability, and allowability of costs. These are the things we call the OMB Cost Principles. And, you have to maintain cost accounting records that are supported by documentation. These are the requirements you're certified to as an organization when you request CHDO designation. You might have had a CPA do that, or some other outside entity. Certification might also have been done by your Chief Financial Officer, your Board Treasurer, or even a HUD approved audit. And you might not have paid close attention to those, but these are the cornerstones of good financial management practice. Maybe some of you on the call have sat in on one of our online certificate courses in CHDO Management. We spend five weeks on financial management, because this is a key to an organization being successful as a business. Just meeting these requirements is your threshold for certification, but if you've got these, it's a good indication that you're ready to manage the resources of a particular development project. So we need to look at whether or not you've taken these financial management practices and applied them to overseeing a development.

The second cornerstone is Financial Stability. Is there able and adequate funding for operations? Is the CHDO an ongoing concern? I know for all non-profits the financial stability is an ongoing concern, and there's a double entendre intended there. But the question is will you be able to survive as an organization? I say it in the trainings this way, "If you fail as an organization, you won't be around to support the project." Success of the project also depends on your long-term success in being there to support it, to complete it, to oversee it through the affordability period. Fiscal soundness leads us to that question of, "Do you have the financial stability to survive the development period and the occupancy period?"

Other cornerstones of the fiscal soundness question run first of all into Liquidity. You know I've talked about liquidity in the guides as well as in the trainings. Liquidity is about funds to pay the bills. In most affordable housing development we do. It's not about equity, because you're not investing money long-term in the deal. Rather you are just putting up money to make the deal happen. For example, you have to put money upfront before anybody will fund the project to pay those upfront costs of site control, planning, design, approvals, funding applications, maybe Phase I Environmental Assessments, and a number of other things that will need to occur before you can even get to a closing. Now fortunately, I'll be able to talk about CHDO pre-development loans in a few minutes as one of the things that the HOME Program enables us to help you with, but you need to have money to pay those bills. In addition, you'll be laying out money throughout the development process. You'll need to have funds to be able to pay those bills, perhaps prior to reimbursement. And also you might be waiting for some or all of your development fees to come in later in the deal. In those cases, you're going to need funds for the organization. That's what liquidity is about. Do you have liquid cash to pay the bills? And there's a whole bunch of things that we can look at.

The Audit is another issue that comes up in fiscal soundness. Now we don't have per se a specific audit requirement for CHDOs. Some of you might trigger the A-133 Audit Requirement, but your PJ may be requiring you to submit either an audit or to have annual financial statements. I spend a whole week in that CHDO online course on audits and being able to use them. I consider them absolutely critical. I don't know how you can business if you don't have good financial information. The important thing about audits is that it tells us that you're regularly having your books looked at; you're having an outside party review it. They might be identifying management issues and internal control issues, and other things to address. It gives us an independent look. We're looking for that good information. We're also looking for whether or not you as an organization are using that information to management yourself.

Finally, and I mentioned this one before, I realize there shouldn't be five cornerstones. There should only be four. But the fifth thing is the Portfolio itself, what you've already got in your portfolio. What you're already responsible for. So many CHDOs that I meet would have the capacity to do development, but it is diminished by ongoing problems they have with existing projects. Constantly needing to bail them out, to beg, borrow, and steal money to maintain the property. Or, not having enough money to pay for proper management so the development team does it in its spare time. It's not only what you're proposing to take on, but what you've got going on already. So the Pipeline and Portfolio question is a big part of Fiscal Soundness. Are these portfolio assets really liabilities to you?

Some other factors that might come up in this analysis that I mentioned at the beginning were things that have to do with how you deal with various stakeholders. How do you relate to the community? Are you good at working with them? Do you have a good community reputation? Are you able to work with the NIMBY factors, or influences that exist out there? Do you have good local support? And how is your partnership with other stakeholders? One of the key stakeholders is of course the local government. Whether or not the local government is your PJ, you still need to be able to work with that local government to get the various approvals and support you need for the proposed project. Another factor in your development capacity is, "Do you have good working relationships with your lenders and funders?" It's usually not just the HOME Program that's funding the project. It's all these other pieces that you put together to fully fund the project. We need to know that you're working well with construction lenders, permanent lenders, and other funders that might help fill the gap outside of the HOME Program. And then there are of course project specific skills and capacity. I mentioned those couple of times, so I won't go back into them again. But they run to the particular type of project that you do.

These are some of the things that a PJ might assess as it makes a determination of whether your CHDO can meet both the staff experience and the developer capacity requirements of the 2012 Act. HUD doesn't specify what the PJ is to review. It leaves it to the PJ to determine what evidence it needs to certify that the CHDO meets statutory requirements. But it does say that they have to have policies and procedures for this, and they've got to have documentation for the conclusion that they reach. It's not as simple as clicking on a box in the IDIS System and we move on beyond this. They're going to have to be able to have enough documentation to be able to certify that they believe you can do the project. And again I want to remind you, it's not just that you can do the project, but that you can make it work for the affordability period.

I've got one more section that I'm going to go into, but I just want to take this moment to remind you to keep submitting written questions under Q&A. HUD and Steve and others are looking at those as they come in. We'll take more of those questions when I get to the end of my presentation.

The last topic I want to take on are things that are strategies that we can use to meet these requirements. By now, you should have a pretty good idea of what Congress asks for and what HUD expects of the PJ in regard to certifying CHDO Staff Development Experience and Capacity. But some of you there are probably thinking, "What do I do if my CHDO can't meet these thresholds?" Or, "I have some experience in capacity, but maybe not everything needed to maximize my chances for development success." Maybe you're taking on a type or scale of project that reflects growth or a shift of markets. For some of us, you've shifted to rental from homebuyer, because your homebuyer markets are saturated and it's something that we've been recommending over the last couple of years as unsold units sat there on the market. For many of you, you may need some assistance to be ready to take on all these responsibilities. You may have loaded staffing or shared staffing situations with parent organizations or sponsors and need to move to that next level where the CHDO can start to stand on its own two feet. The HOME Program requires CHDOs to be able to take on developer responsibilities when they develop with CHDO funding. But it doesn't abandon those who don't have capacity. It has program elements included to build capacity. And so in this last section of the presentation, we're going to talk about some of those things you can do, some of the things that the HOME Program can provide to help expand your capacity to help make you ready to meet these requirements. Hopefully, we can help you find some life lines as we go through this discussion.

A lot of the items I'm about to discuss are included in the CHDO Survivor Kit. Obviously, we're going to have to update the Survivor Kit to reflect some of these 2012 changes. But the capacity building elements I'm going to discuss now all remain valid. And quite honestly are in line or in sync with what the 2012 Requirements are. Perhaps given the threshold that the Congress has articulated for CHDO capacity, we need these Survivor Kit ideas even more. Again, one of the downloads we've attached is the Survivor Kit. It's also available on the HOME Program website under Model Guides.

First of all, if any of you have read the Survivor Kit or the Tool Box, or you've participated in any of our CHDO trainings, including the Certificate Program in CHDO Management, you know that one of core themes is that CHDOs have to be successful as a business to survive and accomplish their mission. Mission does not come first. Mission is the result of business success. You've got to be successful as a business. So a lot of what we try to do in the trainings and with the Survivor Kit, is move you towards strategic planning that charts the course towards success. It helps you focus on the business element. Now when I ran a non-profit like most of you, I didn't come out with an MBA degree and have a business background. I've had to learn this over the years in order to be successful.

The other thing I've got to mention is that I've never seen anything in the non-profit world that is difficult to do as development. It draws you into the for-profit world and into a market-based world unlike anything else I'd ever done as a not-for-profit. It's almost foreign to some of the ways we act and think as non-profits, and we've got to reorient our thinking as we go into development or try to grow into a broader role in development. Some of the things we encourage the PJs to think about was to support you in strategic planning efforts. There are a lot of local universities and foundations that support strategic planning. A lot of the CHDO intermediaries do as well. We encourage the PJs to take another look at your board members, not just to make certain that you meet the one-third requirement for low-income representation, but what are you doing with the rest of the Board? What skills do they have? Do they have business skills, development skills? How do they supplement the CHDO's core development business and make certain that the board can give adequate oversight. We encourage them to help you seek training opportunities for both CHDO staff and Boards. Obviously, we have a lot of HOME training that's offered and available on the www.hometa.info site. There's a training calendar there. But you can also ask your PJ to request local offerings of key trainings. There are some resources beyond those national offerings that might bring some of those closer to you. I know CHDOs can't travel very far to get training, and we don't always bring it right into your back yard. But keep asking for it and hopefully we can bring more of that training. And it doesn't have to be HOME related. Anything on non-profit management and development can be extremely beneficial in understanding your CHDO role.

We encourage the PJs to take a closer look at your operating budgets and your audits. Looking at annual budgets over time gives us an indication of your financial stability and whether you have the resources to cover your operation. Looking at the audits gives us an idea of whether your books are in good order, and whether or not you have appropriate internal controls in place to oversee all the federal funds that we give you to administer. Are there things that we can do to help you work on your financial management practices and stability? Again, this is really linked to strategic planning, and it's a part of it. If you're lacking in certain skills and experience that we need you to fill in your role as a CHDO, helping you seek partners and consultants is another piece that we get into in the CHDO Survivor Kit. Not every developer out there is a good partner for a non-profit. There are some that just aren't compatible at all. You need to know how to seek the right kind of partner, and the right consultants to give you the support you need to be able to complete your projects. And then just a reminder that there is what HUD calls CHDO Intermediary TA, or Technical Assistance. It's funding that's been available since the beginning of the Program. Some of it has been coming to you via your Field Office and some of it from Headquarters. If you think you need help, ask your PJ to request it from the Field Office. They have to sponsor you for that, and we'll see if we can deliver some support directly to your organization to help you plan to meet your development responsibilities.

These are probably the things you've been waiting for me to talk about a little bit, the three other things in the HOME Statue that assist CHDOs beyond the CHDO Set-Aside. And these are things that I think are more about capacity building. The Set-Aside money is about doing projects. These are more about some of those capacity elements that help you be successful at that. They are CHDO Operating Expenses, CHDO Pre-Development Loans, and CHDO Proceeds. Before I talk about them though, let me stress again these are optional benefits that the PJ may provide there. They are not mandatory. You're not entitled to them. You've got to request them and convince the PJ that it's a good investment of these funds to help you be successful as a CHDO.

First, a PJ is permitted to provide up to five percent of its annual HOME allocation to CHDOs for General Operating Expenses. These are not project dollars. They don't come out of the CHDO Set-Aside. They come out of the project pot in HOME, and they cannot be used directly for projects. But they can be used to build the capacity of the CHDO to do develop them. They can be used for hiring staff, training staff, helping with other operating expenses, while the CHDO focuses on preparing for development. Remember that this can only be provided to CHDOs with active CHDO projects or CHDOs who the PJ reasonably expects to be funding in the next twenty-four months. So this is something for something that they have in their queue, or expect to line up in their queue in the very near future. They are incredibly important dollars, but keep in mind that the PJ is taking away money from the projects this year to be able to give you this operating expense money. So you've got to make the case of how this will pay off in the long run. Some of you have been getting it, and some of you have not had access to it because your PJ has elected not to provide it.

Second, there's the CHDO Predevelopment Loan feature. All project dollars have to deliver a project that meets the affordability requirements of the HOME Program. The only time project money is in a positive where it can be forgiven is if a project doesn't go forward is under this CHDO Predevelopment Loan provision. A PJ may take up to ten percent of its annual reservation of CHDO funds to provide its Predevelopment Loans to CHDOs for projects. I mentioned the liquidity issue before, paying those predevelopment costs. That's what this money if for. It's for paying those site control costs, planning costs, design costs, feasibility analyses, environmental assessments, and things of that nature. It's an important resource because it provides timely money when you need it the most when nobody else is funding you. But it's also important to the PJ in that they have the option if the project does not go forward through no fault of the CHDO. In other words, a project proves to be infeasible for one reason or another, those funds can be forgiven and don't have to be repaid. So it's a good thing for you to get access to this money. It's a good thing for the PJ in that they are helping you at a time when they aren't putting money at risk that they would ultimately have to repay.

The third issue is of CHDO Proceeds. Now the first two are more about that up front capacity need that you may have for both Operating costs and Predevelopment costs. This one is more of a longer term capacity issue, not a short-term capacity issue. Usually under most circumstances proceeds of a HOME investment would have to be returned to a PJ is what we call Program Income. This provision allows the PJ to choose to let a CHDO keep what they would otherwise have to pay back. And we call them CHDO Proceeds, and we allow the CHDO to reuse them for HOME or other low-income housing activities. The PJs giving up Program income, but is giving you potentially a source of money that you can use in the longer run to do more projects and to make you successful as a developer. Those of you who've participated in my CHDO courses know that one of the things I say is somebody who does a project is a dabbler. A developer does a pipeline. So it's not just about a single project. It's about a series of projects. CHDO Proceeds help you move from one project to another. A lot of CHDOs relied on this heavily when the homebuyer markets were producing a lot of buyers, and they were having successful homebuyer projects. It's something you might want to explore with your PJ as a long-term opportunity to build your capacity to remain successful as a CHDO.

We also talk to the PJ about what they do at the underwriting stage and the packaging stage. I've defined underwriting in a lot of these courses as "risk assessment," or "risk analysis." You're looking at predicting the success of a project. And an underwriter not only does thumbs up or thumbs down, but rather uses the underwriting opportunity to improve or enhance the project to what we call in the business, "mitigate the risk." Some of the things that we suggested that they look at as they underwrite the project, and something that the 2012 Act requires them to do is to make sure the projects identified {a} market, and that there's a big enough pool of buyers or renters to occupy the project on completion. As you know, we've got a real sensitivity to that with so many unsold homebuyer units sitting out there with HOME assistance but no homebuyer. Congress has put pressure on us to get these units sold or converted to rental. So we don't want to be building more units that are contributing to one of the reputation problems that the Program has.

We also urge them to make sure they right size the project, that they don't let CHDOs take on projects that are too big for their capacity or their resources. Sometimes we take on something that's so far beyond our means that we shouldn't be doing it or we shouldn't be doing it without the appropriate partners or help. Also, we need to be right sizing the assistance, making sure that PJs don't underfund the projects that they fund. They need to include enough money for you to properly develop the project to maximize the physical improvements for fiscal sustainability, and that it's properly funded so that it can be financially stable over time. We urge them to take a look at building or enhancing the development team, making sure you have the right partners and team members, and they have the right skills and experiences and can work together with you and still respect the HOME and CHDO requirements that require you to be in control.

We urge them to make sure that you're designing your projects for sustainability. The project needs to survive the affordability period or we can trigger repayment. PJs can only assist you with development costs, not operating costs. But you can keep operating costs down through quality improvements, energy enhancements, reserves, other capital expenditures, and things that help insure sustainability. Sure, HOME can't fund all of those things. In particular reserves are limited as to what we can fund under HOME, but they are nonetheless important to the project and should be funded with other resources. Sustainability is not just an issue for rental properties but also homebuyers. Regardless of what you're doing, you need to think about how this project is going to survive the affordability period. Have I done everything at the development stage to set it up for success?

We also urge the PJs to make sure that they're paying reasonable developer fees. You've heard me say time and time again, development fees are the life blood of the industry. CHDOs can't survive if they don't earn full developer fees. PJs shouldn't expect CHDOs to do it for less than others. We're not-for-profit not because we don't want to make a profit; we just have limitations on how we use those profits. If you don't make profits, how do you move to your next development venture? We've urged them to take a look at it if they happen to be in a position now where they've been limiting non-profit fees to lower levels than for-profit developers. But we've also urged them to think about staging those developer fee payments against milestones, or other evidence of progress. I say many times in the trainings that you don't get paid for showing up; you get paid for getting the work done. We've urged them to make progress payments, because most of us CHDOs can't afford to wait until the end of a project to get our fees as some developers do. You need to be paid along the way so that you can keep your doors open. But those payments have to be tied to actual accomplishments.

There's a lot more that I could say about sustainable underwriting and how to make projects work. But I really wanted to stress to you that project and organizational viability are linked. You can't have one without the other. You can't have the successful project if it bleeds the organization to death. So we've got to make certain when we package the project that we don't add another liability to your portfolio. We want to make certain that it's properly funded and planned for success. I also talked to them briefly about the ongoing implementation support. In particular how they're involved throughout the development process and not just coming in for disbursement inspections and things like that. They need to be involved in progress meetings, tracking progress, regular inspections, looking at disbursements, assistance with negotiations, and analysis of change orders. We think that their active support to you through that process will be helpful in moving the project along. We've urged them also to think more broadly about monitoring and TA, and not just looking at regulatory compliance, but whether or not the project and the CHDO are going to successful. That looks at financial viability, the healthy functioning of the CHDO, as well as the project itself.

We certainly realize we can't solve every CHDO issue with limited HOME and CHDO resources. I noticed one of the questions that came up is, "We don't get very much in operating expenses. How are we supposed to survive?" Well my answer is that the HOME Program was never conceived to fully fund an organization. There just isn't enough money in this country to fund more than a few organizations. It's supposed to be a supplement to help you get to a broader development role. It's supposed to help you sustain in the long run, but you need a diversified funding source. HOME and CHDO are only one of the many sources that you need to rely on. Our success in the HOME Program is linked to your success. If CHDOs fail the communities aren't served, PJs may be handed back a failed project, and may have a possible repayment burden. We need CHDOs to succeed. We need to give you every bit of assistance we can muster so that you and the Program can succeed, but we don't have unlimited resources. Uncompleted and unsuccessful projects including CHDO projects contributed to the appropriations cuts and the requirements we've been explaining to you. We've got to overcome this image that we don't always get our projects done. We've got to be successful. We've got to show Congress we can succeed. And remember that Steve's earlier slide referred to some of the changes that a PJ might have to make. And sometimes that means that the old process no longer survives. And some of you have been struggling with your local PJ CHDO funding process and have been dealing with CHDOs that have not been producing, this might be the opportunity to show that you can produce and have access to funds that you haven't had in the past.

I hope that some of these things have given you an idea of what we've told the PJs in terms of support. And it may give you some ideas of some additional things you can explore on your own and with your PJs. What I'd like to do is hand it back to Steve now, who's going to do a few wrap-up slides, and then we'll go into another Q&A. Steve?

Steve: Thank you very much Monte. Before we go back into the Q&A to wrap up today's session, let's just touch on a couple of summary things and some housekeeping reminders. Again, we know that it's a difficult environment. We know there are a lot of changes going on, and sometimes we even get comments from these prior webinars, “Why are there so many changes going on?” Congress passed the law, the President signed it, and we have to deal with this. And so hopefully despite the confusion, despite the many things that are going on, we’ve been able to provide you with a little more of the context and a better understanding of the Fiscal Year 2012 CHDO Development Capacity Requirement. How that is built upon the foundation of things that are in the existing rule, and how the new aspects of that requirement build on that designation expectation to have PJs look specifically at your staff and at the size, the scope, and the complexity of the project that you’re taking on at the time they make a reservation or a commitment to you. And this really echoes the same concerns that Congress had in creating that project assessment certification that PJs have to do that among other things, require the PJ to evaluate any developer’s capacity, including their fiscal capacity at the time the PJ makes a formal HOME commitment.

Again the other confusing thing that we really just can’t get around is that we know many of you have slightly different experiences as your local PJ interprets and adds to these requirements in their own ways. But hopefully you’ve got some sense of where things are going. Monte shared with us a lot of practical tips about some of what you might expect from PJs as they work through these things, the things that they’re going to ask you for to help document. And hopefully by stepping back here at the end to talk about some of the best practices that we’ve shared with PJs, not only do you have some better ideas about how you can succeed, but you have ideas about how to work and communicate with your local PJ about ways they can help you. So hopefully in spite of the difficulty, you’ve got a little bit more equipment to be able to deal with moving forward. We know these aren’t an easy set of changes, and change never comes easily. But together we will get through this.

I have a couple of brief housekeeping things, and then I’ll turn it back over to HUD. Again, there are several available resources for you today. You can download those now from within the live meeting client by clicking on that little icon in the upper right that looks like three sheets of notebook paper. We already have in fact posted these to the website. Somebody wrote in and told us that there are a couple of pages missing from the Survivor Kit. We will get that reposted to the website as well after this. Also, those of you that need to share this with Board Members or share this with other folks, the recording will be up probably sometime next week along with the transcript. At the end of this, we’ll go into an evaluation. You’ll be able to do that right through the life meeting client. If you have highly specific questions you should be communicating openly with your PJ, and your PJs can route those very detailed questions through the local field offices. So with that what I’m going to do is turn this over to Ginny and the folks back at HUD and see what kind of questions have come in that they would like answer.

Note: This transcript does not include the Q&A portions of the webinar. HUD will be posting additional written guidance in the form of Frequently Asked Questions (FAQs) that address both questions addressed in this webinar and others that were not addressed due to time limitations. Those will be posted to the www.hometa.info website as they become available.

Steve: I think you've done a good job of covering those. I would note that we know there are a lot of questions that came in, and some of them were just unfortunately off topic today. We can't talk about what's in the rule. HUD has been very generous I think in what they've mentioned, because there are specific rules about how they can and can't talk about rule making. We are going to be developing the FAQs. We'll try to point to some other resources that go back and help answer some of those core questions that relate to other topics or relate to the original CHDO designation or some of those things. And we'll try to make sure that that gets covered in the written FAQs. I also see that we've had somebody ask about a heads up when those additional resources get posted. We will work with the folks that send out to the list serve and try to have them send something letting you know when there are new materials posted as additional follow-ups here. If you have additional questions, we know we are starting to run out of time, we are going to go into an evaluation piece, a survey on what you thought of the webinar today. And there is an open ended question within that about what other questions you have. And so we will take the question log today and we will use those to try to develop the FAQs. You've done a good job of handling those things Ginny. Is there anything else that HUD wants to share today before we wrap up?

Ginny: No, I just want to thank everybody for tuning in and participating. And also to encourage people to try and establish open communications with their participating jurisdictions about what their processes are going to be for evaluating capacity and for making the certification to try and insure that this goes as smoothly as possible.

Steve: Yes. Okay. Well again to everybody on the call, we very much appreciate your participation today. We appreciate those questions that you have added. You have helped in the participation of your own learning and in the contributing to the learning of others. And we do very much thank you for the ongoing work you do in your community. So with that, we're going to go ahead and open up the evaluation. We ask that everybody fill that out please. From there we will have Tashona, the operator, come back on and go ahead and close the conference for us. Please put the speakers back into the speaker conference Tashona.

Tashona: This concludes today's call. You may now disconnect.