

THE HFA INSTITUTE 2020

Working with CHDOs

January 13, 2020

NCSHA National Council of State Housing Agencies

1

THE HFA INSTITUTE 2020

CHDO Topics

- Update on program deadlines
- Choice of topics – vote for topic
 - Certification issues
 - Role issues
 - Discussion of capacity issues & workouts

Trainer: Monte Franke
MLFranke@aol.com

2

THE HFA INSTITUTE 2020

Update on CHDO Commitments & deadlines

3



THE HFA INSTITUTE 2020  

CHDO Reservations *Commitments*

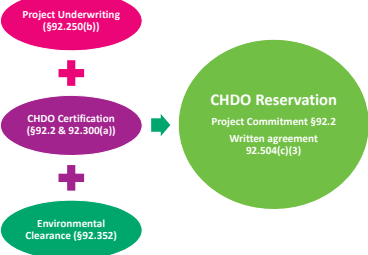
- To reserve CHDO set-aside funds, funds must be **committed** to a specific CHDO project
- 24 month reservation/commitment deadline
 - Suspended appropriation year-by-year
 - **Consol. Approp. Act of 2019 suspended CHDO reservation deadline thru 2021 & restored CHDO funds deobligated in 2018**
 - **2020 appropriations extended suspension thru 2022**

4

4

THE HFA INSTITUTE 2020  

Project Commitment



```

    graph TD
      A[Project Underwriting  
(§92.250(b))] -- "+" --> B[CHDO Certification  
(§92.2 & 92.300(a))]
      C[Environmental Clearance  
(§92.352)] -- "+" --> B
      B -- "→" --> D[CHDO Reservation  
Project Commitment §92.2  
Written agreement  
92.504(c)(3)]
  
```

5

5

THE HFA INSTITUTE 2020  

Current CHDO Deadlines

- 24 month CHDO reservation: suspended
- But project deadlines remain in force:
 - Homebuyer: project completed/sold within 4 years
 - 9 months from construction completion to ratified sales contract (part of 4 years)
 - Rental: project completion (work completed, funds expended) within 4 years of commitment
 - 18 months from completion for initial occupancy (occupancy not part of 4 years)

6

6

THE HFA INSTITUTE 2020  

Certifying CHDOs

7

7



THE HFA INSTITUTE 2020  

CHDO Certification

- Each time it commits funds to a specific CHDO project, a PJ must certify that the nonprofit:
 - Meets CHDO definition (including the staff capacity requirement)
 - Has capacity to fulfill specific role (owner, developer, sponsor) it will assume for the project
- This is in addition to the underwriting and other conditions for a project commitment

8

8

THE HFA INSTITUTE 2020  

Meeting the CHDO Definition

Legal structure



Independence from gov't or for-profit entities

Accountable to LI community

Capacity & experience (role)

9

9



THE HFA INSTITUTE 2020  

CHDO Legal Structure

- To be eligible, organization must:
 - Be organized under state and local law
 - Have among its purposes to provide decent and affordable housing to low income persons
 - Net earnings provide no benefit to members, founders, or other individuals
 - Not be under control of individuals/entities seeking to profit
 - Have IRS tax exempt status
 - Not be a governmental entity (PJ, other Jurisdiction, tribe, PHA, IHA, HFA, RA)

10

10



THE HFA INSTITUTE 2020  

Independence

- Applicable to all CHDOs
 - Max. 1/3 of board public officials or gov't employees
 - CHDO employees **cannot** be gov't officials/employees
- If created by a governmental entity
 - Gov't entity cannot appoint more than 1/3 of board, those members may not appoint remaining 2/3
- If created by for-profit
 - For-profit can't be housing development/mgt entity
 - For-profit can't appoint more than 1/3 of board...
 - For-profit officers/employees can't be CHDO employees

11

11



THE HFA INSTITUTE 2020  

Accountable to the LI Community

1. CHDO's "community"
 - May be multi-jurisdictional, but not entire state, and
 - At least one year of service to community (not limited to housing)
2. At least 1/3 LI representation on board
 - Low-income residents of the community
 - Residents of low-income neighborhoods
 - Elected representatives of LI neighborhood org
 - Gov't officials/employees/appointees not counted to LI
3. Formal process for LI input on project design, development & management

12

12



THE HFA INSTITUTE 2020  

Capacity

- Financial mgt system: 2 CFR 200.302 - 200.303
- CHDO must have paid staff with capacity to oversee project
- CHDO must demonstrate capacity in relation to its "role"
 - Own, Develop, and Sponsor roles as defined in §92.300(a)(2) - (6)

13

13

THE HFA INSTITUTE 2020  

Staff Capacity

- Paid staff capacity appropriate to CHDO role
 - Could be full-time or part-time
 - Must be directly paid by CHDO: W-2 or contracted
- Staff cannot be:
 - Donated by, contracted through, or cost allocated from another entity (including parent nonprofit)
 - Board members or volunteers
 - Consultants—except 1st year of CHDO funding
 - Officials/employees of govt or of for-profit creator

14

14

THE HFA INSTITUTE 2020  

PJ Implications: Certification

- Tie certification to project funding
 - Ensure full updated review for CHDOs receiving multiple commitments
- Set framework to evaluate staff capacity
 - Skills, prior experience, availability
 - Varies by project type & role
- Document board independence
 - Governmental entity relationships need to be documented for all board members & staff

15

15

THE HFA INSTITUTE 2020  

CHDO Roles

16

16



THE HFA INSTITUTE 2020  

Roles: Own, Develop, or Sponsor

- Own, Develop, and Sponsor roles defined in §92.300(a)(2) - (6)
 - Previously in CPD-97-11
- Key considerations:
 1. Ownership/development activity
 2. Ownership/control by CHDO
- CHDO must demonstrate capacity in relation to its "role" – certify for specific project role

17

17

THE HFA INSTITUTE 2020  

CHDO as Developer: Homebuyer

- CHDO owns, rehabs/constructs, then sells
 - If wholly-owned subsidiary, HUD waiver needed
- Written agreement with CHDO must include:
 - Actual sales price or method for determining it
 - Disposition of sale proceeds: return to PJ as PI or CHDO to retain as Proceeds (and use of proceeds)
- Not CHDO-specific, but all buyers must be underwritten, no more one-size fits all DPA

18

18

THE HFA INSTITUTE 2020  

CHDO as Owner: Rental

- CHDO itself acquires & owns rental housing
- CHDO does not have to develop
 - If development, CHDO can hire/oversee project manager or developer to rehab/construct
- CHDO must be owner in fee simple or have long-term ground lease during development and affordability period

19

19


THE HFA INSTITUTE 2020  

CHDO as Developer: Rental

- CHDO itself owns and develops housing
- CHDO arranges financing and is in sole charge of construction or rehab
- CHDO must be owner in fee simple or have long-term ground lease during development and affordability period

20

20

THE HFA INSTITUTE 2020  

CHDO as Sponsor: Rental Turnkey to Other Nonprofit

- CHDO develops housing on behalf of another non-profit and transfers title after completion
 - Conveyed at pre-determined time to pre-identified nonprofit
 - Other nonprofit cannot be created by governmental entity, but can be another CHDO
- If transfer does not happen, CHDO must maintain ownership for affordability period

21

21



THE HFA INSTITUTE 2020  

CHDO as Sponsor: Rental CHDO Affiliate

- Rental housing is "sponsored" by a CHDO if owned or developed by a:
 - For-profit or nonprofit that is wholly-owned subsidiary of the CHDO; or
 - If owned by an Limited Partnership (LP) or Limited Liability Company (LLC), the CHDO or its wholly owned subsidiary must be the sole general partner (LP) or sole managing member (LLC) (with limitations on replacement)
- PJ must provide (loan) funds directly to ownership entity

22

22



THE HFA INSTITUTE 2020  

Implications: Roles

- Assess impact of role requirements
 - Owner role expands opportunity for CHDOs without "development" experience, some may be new CHDOs
- Sponsor role impacts on LIHTC projects
 - Agreement and funds flow directly with/to ownership entity
 - Can't grant to CHDO as intermediary who loans to owner
 - No more joint ventures
 - Written agreement provisions re: maintaining CHDO status, removal/replacement of CHDO

23



23

THE HFA INSTITUTE 2020  

Discussion: Capacity Issues & Workouts

24



24

THE HFA INSTITUTE 2020  

What Are Your CHDO Challenges?

<p>Existing CHDOs/Projects</p> <ul style="list-style-type: none"> • CHDOs losing or abandoning status? • CHDOs going out of business? • CHDO projects not financially viable? • CHDOs not able to maintain/manage? • Other? 	<p>New CHDOs or Activities</p> <ul style="list-style-type: none"> • Attracting/qualifying CHDOs? • Underserved areas? • New types of projects? • CHDOs not able to meet role requirements? • Other?
---	---



25

THE HFA INSTITUTE 2020  


It's Not Just A Regulatory Issue

- Funding is lower → fewer CHDOs supported
 - But CHDO funding was never sufficient to fully support CHDOs
- Other funding also is being reduced → increasing difficulty for nonprofits to survive
- CHDO is a long-term commitment (period of affordability) → PJs cannot fund CHDOs that cannot survive


26

THE HFA INSTITUTE 2020  

Survival: Dual Imperatives



Projects must be financially viable and self-sufficient, and should fully compensate CHDOs for development & management



Non-profits must act like businesses, and must plan, manage and diversify to ensure their long-term survival

←—————→

27

THE HFA INSTITUTE 2020  

Survival Strategies: Organization

- Integrate strategic planning
- Enhance financial management & control
- Diversify operations & revenue sources
- Broaden roles
- Analyze/stabilize portfolio
- Expand partnerships
- Consider mergers & acquisitions

28

28



THE HFA INSTITUTE 2020  

Survival Strategies: Projects

- Projects must be feasible and viable, not a drain on nonprofit resources
 - Underwriting, assistance, monitoring, workouts
- Focus on underwriting:
 - Analyze market demand (is it sustainable demand?)
 - Properly capitalize improvements (useful life)
 - Provide funding sufficient to ensure operating viability (POA operating analysis & funding of reserves)
 - Fund full developer fees (disburse by milestones)
 - Assess capacity to manage

29

29



THE HFA INSTITUTE 2020  

Ways to Assist with HOME

- Technical assistance
- Operating assistance
 - Maximum 5% of award
 - Set-aside funding or expected within 24 months
- Pre-development loans
 - Maximum 10% of set-aside funding
 - Forgivable if project infeasible
- CHDO proceeds
 - Net sales proceeds from homebuyer
 - Not limited to HOME uses but for LI housing

30

30



THE HFA INSTITUTE 2020  

Proactive Monitoring

- It's not just about compliance, but about viability → asset management perspective
 - Physical inspections – not just for minimum deficiencies, but for deferred maintenance
 - Financial review – financial red flags, e.g.:
 - Revenues not increasing or declining
 - Increased vacancy & collection loss
 - Missed reserve contributions
 - Increasing payables
 - Organizational health (turnover, financial health)

31

31

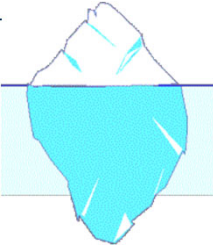
THE HFA INSTITUTE 2020  

Project Workouts

- If project problems, analyze for project workout.



Workout principles:

- Expose all problems (not just tip of the iceberg)
- Don't just band-aid symptoms
- Over-engineer the workout for long-term viability
- All parties must come to the table and participate in the workout solution



32

32

THE HFA INSTITUTE 2020  

HOME & Workouts

- Consider changes to HOME loan terms
 - Generally, cannot "double dip" during the POA
 - However, 92.210 sets conditions for additional HOME investment or change in assisted units
- Request HUD TA
- Also, consider operating expenses & CHDO proceeds, if available

33

33

Organizational Workouts

- If CHDO organization is failing, conduct org assessment & provide TA to stabilize
- If CHDO is not viable
 - Sell/transfer project(s) to another CHDO to retain CHDO status of funds
 - Use ROFR or other legal options to gain control & preserve units (& avoid repayment)

34

34

Wrap Up



MLFranke@aol.com

35

35
