



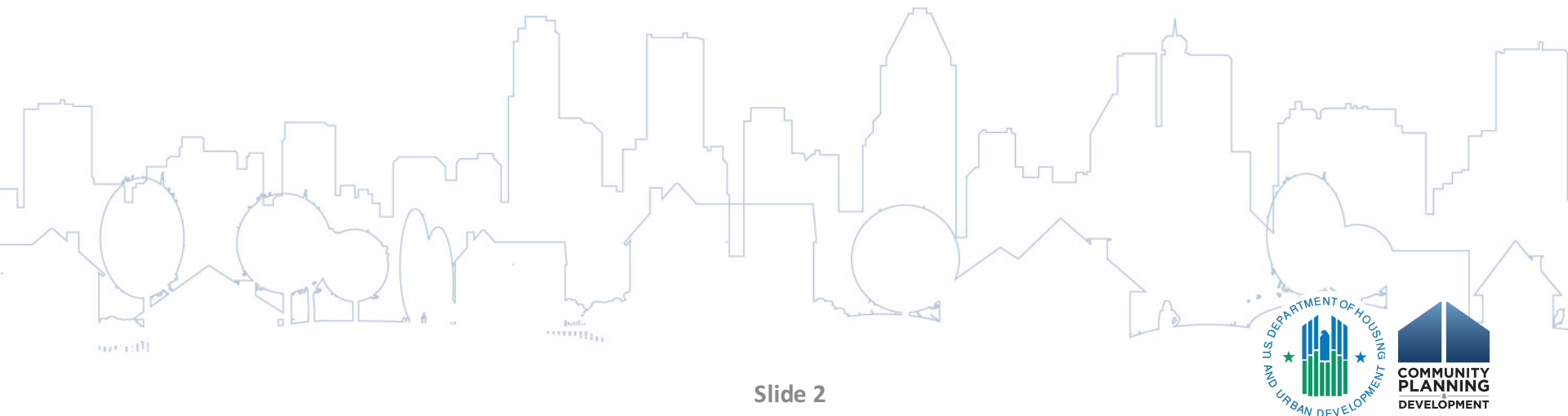
Requirements for Committing HOME Funds

Notice CPD-15-09



HUD Welcome

- Mandy Wampler, Office of Affordable Housing Programs, HUD
- Steve Lathom, TDA Consulting



Overview

- Commitment deadline requirement & the definition of commitment
- Requirements for committing funds
 - To programs
 - To projects
- Additional commitment types
 - Downpayment assistance, homeowner rehab, TBRA, CHDOs
- Ensuring timely commitments

Background

- 24-month commitment deadline requirement
 - Statutory requirement at Section 218(g)
 - Regulatory requirement at §92.500(d)(1)(B)
- Definition of commitment at §92.2
 - Commitments to programs
 - Commitments to projects
- Pre-commitment requirements at §92.250(b)
- Written agreement requirements at §92.504(c)
- Notice CPD-15-09

Commitment Deadline Requirement

- 24-month commitment deadline
 - PJ must commit its entire HOME grant
 - Deadline is last day of the month, 24 months after HUD executes PJ's annual HOME grant
- Failure to commit will result in deobligation of uncommitted funds
- Statutory requirement = cannot be waived (except in cases of Presidentially declared disasters)

Definition of Commitment

- HOME written agreement that complies with §92.504(c) is the HOME commitment
 - Legally binding, fully executed signed and dated by all parties (signature page)
 - Last dated signature is commitment date
 - Should be separate from financing documents (mortgage/deed of trust, note, etc.)
- Two Types of Commitments:
 1. To programs (undertaken by State recipient/subrecipient)
 2. To specific local projects

Project v. Program Commitments

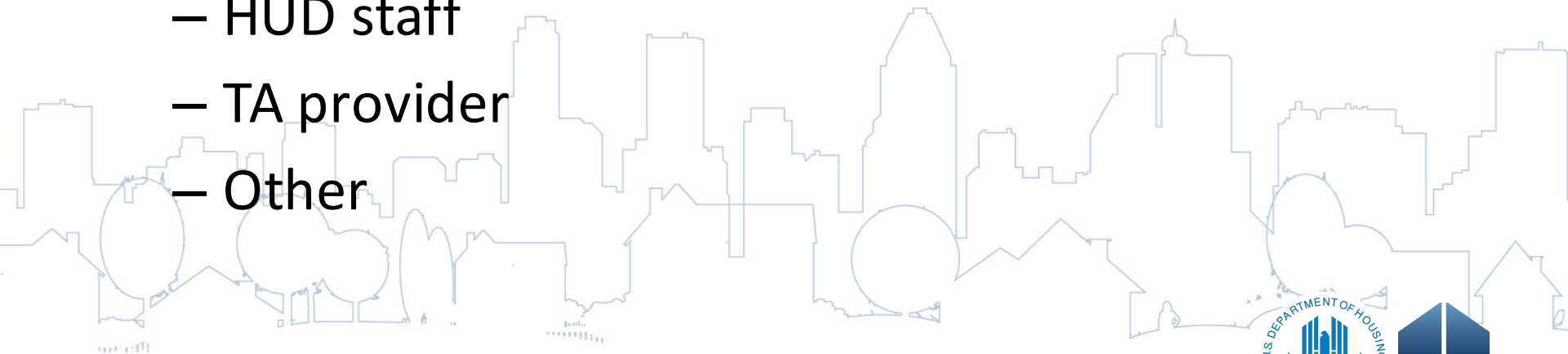
- State recipient or subrecipient may administer all or a portion of HOME program on PJ's behalf
 - State recipient/subrecipient awards funds to specific projects
- PJ may directly administer HOME program by undertaking specific projects
 - Developing affordable housing
 - Awarding funds to developers
 - Providing HOME to low-income beneficiaries (e.g. homeowner rehab, DPA, TBRA)
 - Written agreement with property owner

Implementing the Commitment Requirements

- Checklists provided as attachments to Notice CPD-15-09
- PJ must establish its own Policies & Procedures
 - **Policies**-Overarching principles that guide the decisions/actions of the PJ and its partners
 - **Procedures**-Answers *who, what, how* to implement policies
 - **Documentation**-Every P&P must establish the PJ's method of documenting compliance (**signatures!!!**
dates!!!)

Participant Poll #1

- Who is on the webinar today?
 - PJ
 - State Recipient/Subrecipient
 - CHDO
 - Developer
 - HUD staff
 - TA provider
 - Other



Commitments to Programs

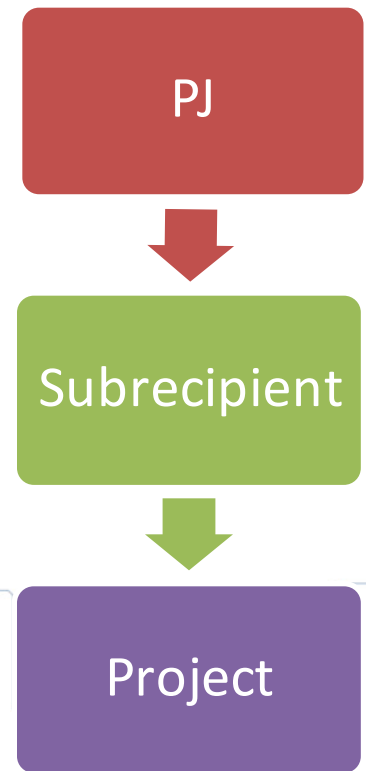


State Recipients & Subrecipients

- State recipient unit of general local gov't
- Subrecipient public agency or nonprofit org
 - If the PJ controls the entity (a PJ's social service agency), this is not a subrecipient
- Written agreements between consortium members:
 - Must be for a specific project
 - General agreements between lead entity and members are not commitments

Program Commitment

- Legally binding written agreement
 - With State recipient or subrecipient
 - Awarding specific amount of HOME funds
 - To operate program on PJ's behalf, usually DPA, homeowner rehab, or TBRA
- State recipient/subrecipient will commit to specific projects
 - Must meet same standards as PJ making project commitment



What is not a Program Commitment

- Agreement with an entity the PJ controls or that is part of the PJ itself
 - e.g. agreement between a PJ's Housing Dept. & Social Services Dept. for TBRA
- Agreement btw consortium lead and member
 - Must meet standards for project-specific commitment
- Annual Action Plan, resolution, budget, etc.

Commitments to Projects



1. The Project

- Must have an identifiable project/property
- Address or legal description
- Project definition (§92.2):
 - A site or sites with any building or buildings
 - Under common ownership, management, and financing
 - Assisted with HOME funds as a single undertaking

2. Market Assessment

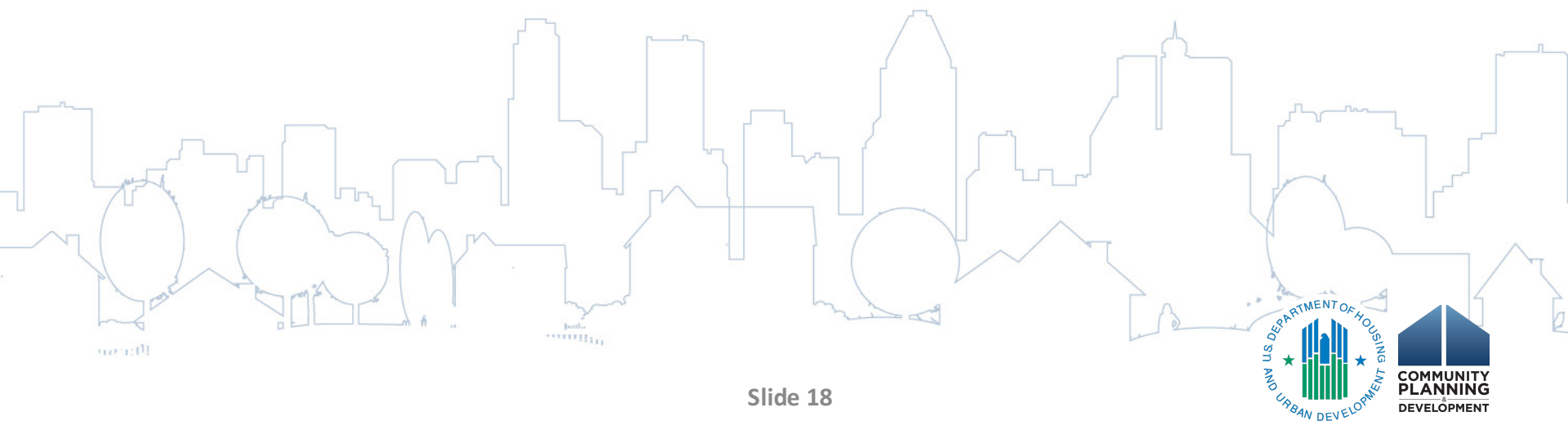
- Must assess current market demand in neighborhood for type and # of units
 - Applies to development activities only
 - N/A to homeowner rehab or stand-alone DPA
- Independent market study not required
- Can use assessment conducted by developer or other funder (**PJ must review and approve**)
- Assessment must be dated (<12 months old)
- Admin cost or project delivery cost

3. Environmental Review

- PJs cannot commit HOME funds or other funds before completion of ER
- EXCEPTION: *“conditional commitment pending completion of ER”*
 - Commitment for purposes of 24-month deadline
 - All awards/commitments of non-HOME & non-HUD funds must be conditioned on receipt of HOME funds
 - Must prohibit choice limiting actions by applicant/owner and other funders
 - Cannot be entered in IDIS until Authority to Use Grant Funds is received
 - See Notice CPD-01-11

4. Secured Financing

- Financing secured from all sources for all phases (acquisition, construction, permanent)
- Must be in writing, dated prior to commitment
 - Award letter, letter of intent, term sheet, etc.



4. Secured Financing continued

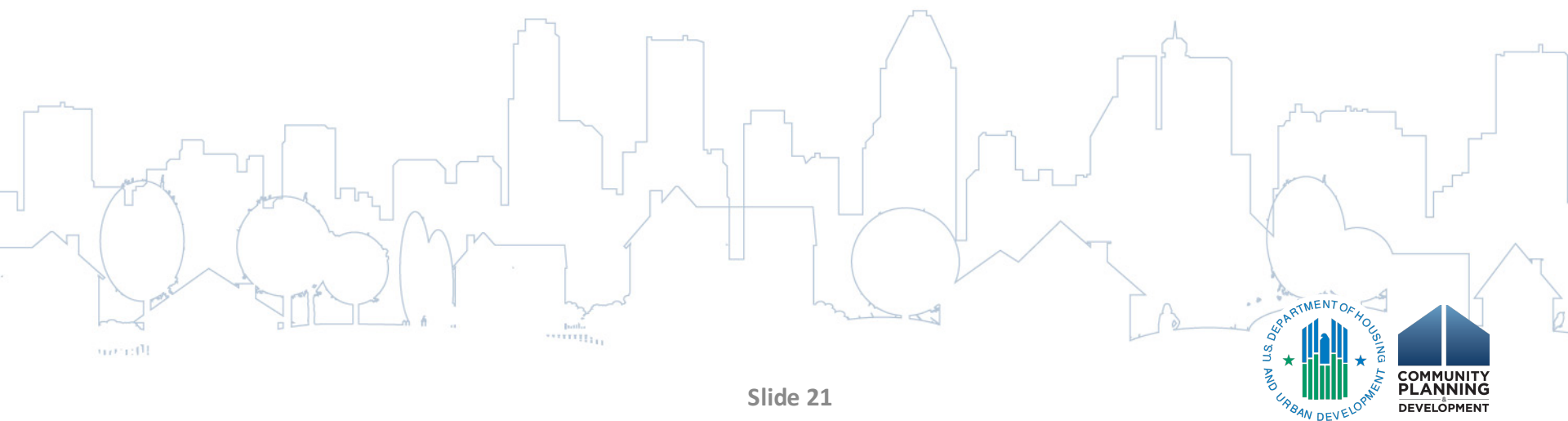
- Must be firm, non-speculative sources, but not necessary that other financing has “closed”
 - Terms/amounts consistent w/ underwriting
 - Sources compatible with HOME requirements
 - Reasonably expected to close before disbursement of HOME funds
- Low Income Housing Tax Credits
 - Reservation from allocation agency
 - Good faith offer of equity investment

Preliminary Awards

- Can be made in advance of firm commitments for other financing (e.g. LIHTC, mortgage, etc.)
 - To show intent and help secure other financing
- **Preliminary awards are NOT commitments**
 - Must not be legally binding
 - Cannot be entered into IDIS
 - Must include language prohibiting choice limiting actions
- **Strongly suggest preliminary award be:**
 - Time limited, subject to cancellation if not progressing toward actual commitment

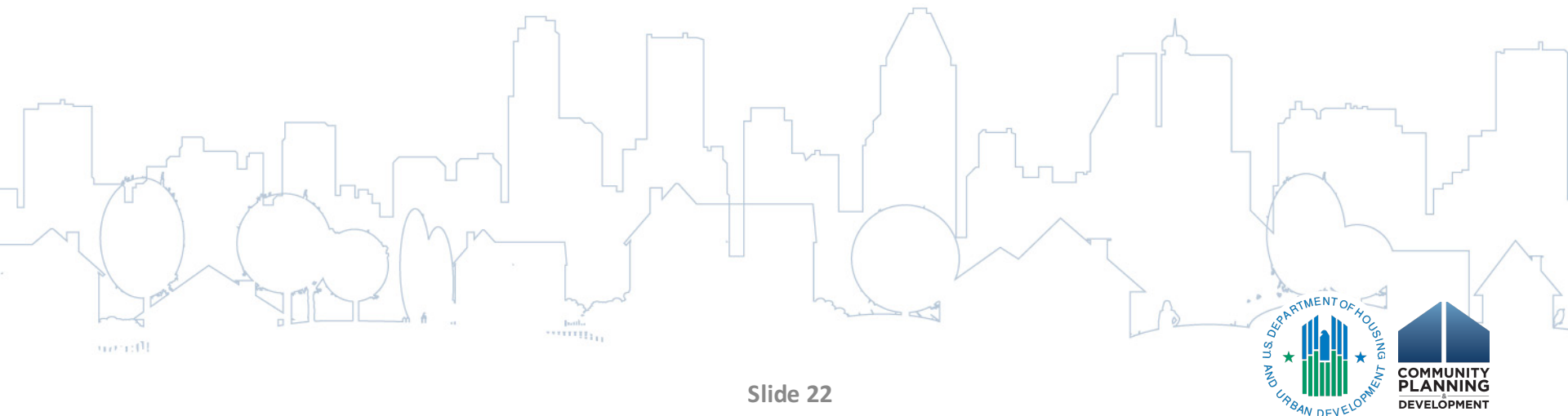
5. Budget

- Budget established and approved
 - Reflects total development costs and funding
 - HOME within minimum/maximum subsidy limits
 - HOME supports eligible costs



6. Cost Reasonableness (Sources & Uses)

- Sources & Uses
 - Sources sufficient to cover costs
 - All project costs are reasonable and necessary



7. Underwriting & Subsidy Layering

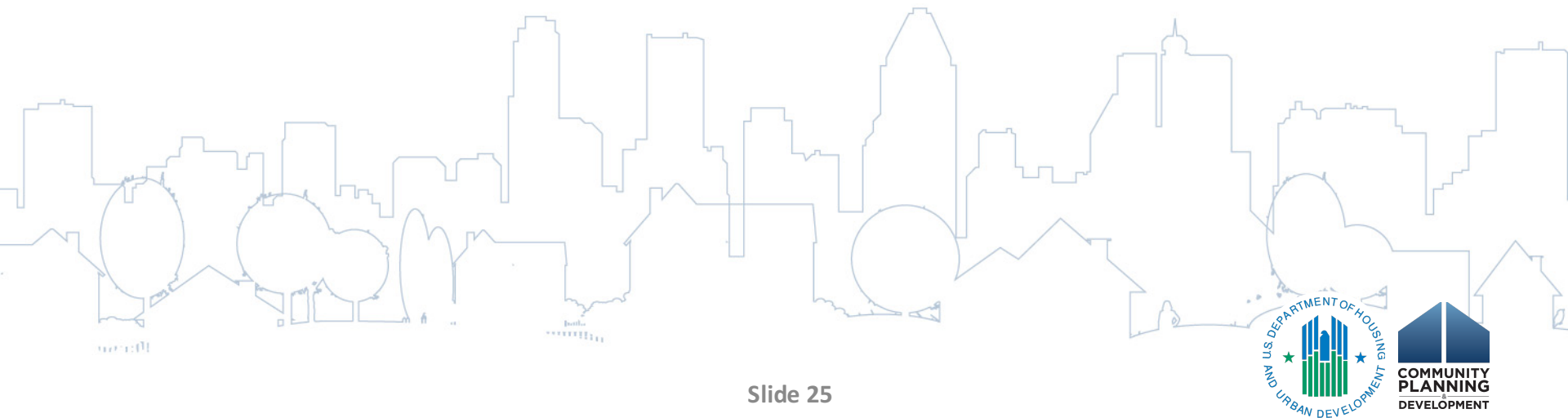
- PJ must determine that HOME funds are reasonable, necessary, and sufficient to ensure financial viability for entire period of affordability
 - Reasonable profit or return to owner/developer
 - Cost allocation determines HOME units/investment
 - See Notice CPD-15-11
- Affirmatively review and approve review
 - With dated signatures
- Note: must also underwrite the homebuyer

8. Experience and Financial Capacity of Developer

- PJ must establish assessment standards:
 - May vary by size, scope, complexity of project
- Experience of staff and organization
 - Past performance, training, etc.
- Financial capacity
 - Especially net worth and liquidity
- PJ procedural considerations
 - What information is required from the developer?
 - How will it document?

9. Construction Start within 12 Months

- PJ must assess and document the feasibility of meeting this requirement
- Does the construction schedule support this?



10. Completion Schedule

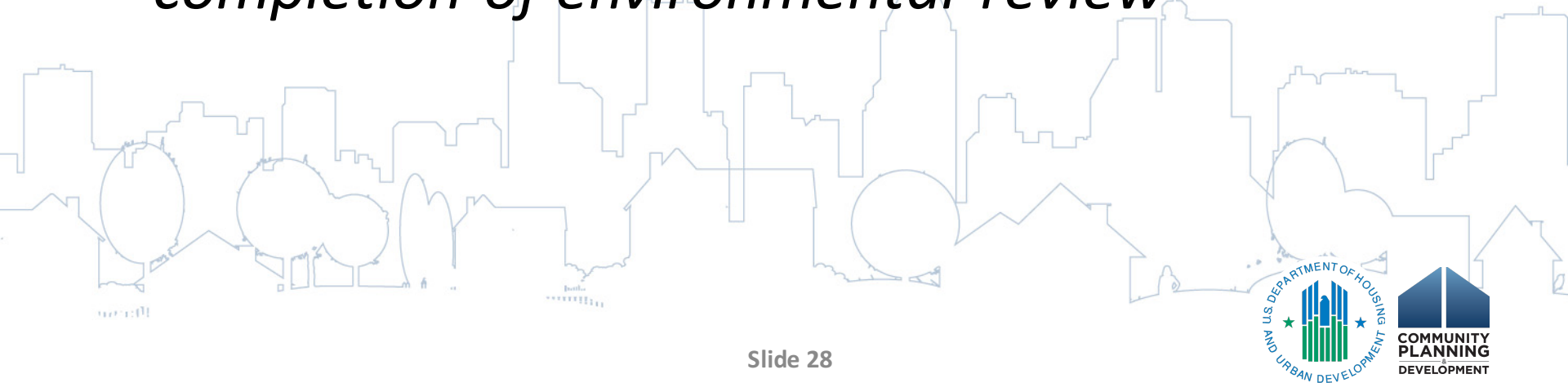
- Completion schedule consistent with HOME deadlines:
 - Construction start within 12 months
 - Project completed within years
 - Occupancy deadlines
 - Homebuyer: 9 months from construction completion to ratified sales contract
 - Rental: 18 months from project completion for initial occupancy

11. Set-up in IDIS

- Projects can only be funded into IDIS after written agreements have been executed
- *Deadline Compliance Status Report* published monthly
- Agreements executed prior to deadline but not yet entered into IDIS will count toward meeting 24-month commitment requirement
 - HUD must review/approve
 - Conditional commitments pending Environmental Review
 - Agreements signed but not yet entered
 - See HOMEfires Vol. 13, No. 1 (4/1/2016)

What is not a Project Commitment

- Project award letter, letter of intent, council resolution, budget, etc.
- Preliminary award
- Agreement executed prior to completion of ER that is not a “*conditional commitment pending completion of environmental review*”



Participant Poll #2

- For PJs only
- Which of the pre-commitment requirements have been most challenging to implement?
 - Conducting market assessment
 - Ensuring all other funds “firmly committed”
 - Underwriting (dollars and cents)
 - Assessment of developer capacity



Additional Commitment Types



Direct Homebuyer Assistance

- Stand-alone buyer assistance, e.g. DPA
 - Buyer purchasing home for sale in private market
- PJs may pre-qualify buyers, but may not execute a written agreement committing HOME funds until:
 - Buyer has identified a specific property
 - Other funds (e.g. first mortgage, buyer cash) secured
- Assistance must be based on underwriting of buyer's specific circumstances and need
 - Primarily lending ratios, assets available to purchase, ability to sustain housing (in accordance w/ the PJ's standards)

Homeowner Rehab

- Not a development activity, so not subject to:
 - Market assessment
 - Developer capacity review
- Still requires other elements, especially:
 - Firm commitment of other funds (if any)
 - Cost reasonableness
- If HOME provided as amortizing loan to homeowner, must underwrite ongoing feasibility/affordability
 - Similar to underwriting direct buyer assistance
 - Focus on owner's ability to sustain housing payments

Tenant-based Rental Assistance

- Commitment “credit” occurs **EITHER**:
 - If PJ awards funds to State recipient/subrecipient who will operate program on PJ’s behalf, when written agreement with State recipient/subrecipient is executed; **OR**
 - If PJ directly operates TBRA, when PJ enters in a rental assistance contract w/the tenant or property owner

Commitments to CHDOs

- “Reservation” from CHDO set-aside must meet all project specific commitment requirements, AND
 - PJ must certify CHDO meets definition (§92.2) and has capacity appropriate to project and CHDO’s role as owner, developer, or sponsor
- Written agreement always w/property owner
 - In CHDO “sponsored” transactions, PJ must execute agreement with ownership entity

CHDOs continued

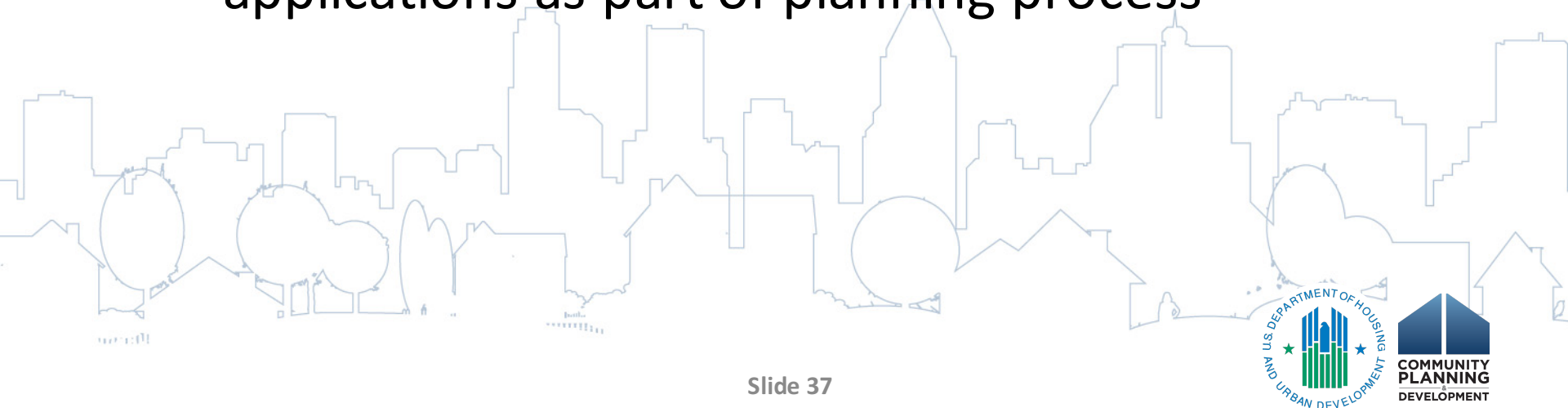
- Also credited toward 24-month commitment deadline requirement:
 - CHDO Operating awards under §92.208
 - Not from CHDO set-aside
 - CHDO Predevelopment loans under §92.301
- Remember, CHDOs are also nonprofits and may act as nonprofit subrecipients
 - Operate program on PJ's behalf (e.g. DPA)
 - Not funded from CHDO set-aside, comes from SU subfund

Ensuring Timely Commitments



Planning & Application Timing

- Critical to develop pipeline of future projects
 - Recognize that many development projects require significant predevelopment period
- ConPlan/Action Plan
 - Permissible to issue RFPs and take initial applications as part of planning process



Use of Preliminary Awards

- PJ can
 - Work informally to vet projects, assess fit w/PJ priorities
 - Complete initial underwriting reviews based on reasonable projections of other sources
 - Issue preliminary awards to demonstrate general intent
- **Cannot legally bind PJ to funding!!!**
 - Other sources will not issue binding commitments either, all financing sources mutually contingent
- **Commitment v. Closing**
 - Commitment can still precede closing
 - Never disburse until all sources closed

Pre-Development Costs (§92.206(d))

- HOME may be used to pay for some soft-costs incurred up to 24 months before the commitment of HOME funds
- Architectural, engineering, or related professional services to prepare plans, drawings, specifications, or work write-ups
- PJ must include this in the written agreement committing funds
 - Should specify lookback period, max. 24 months

Putting the Pieces Together

(This will vary based on PJ's own process)

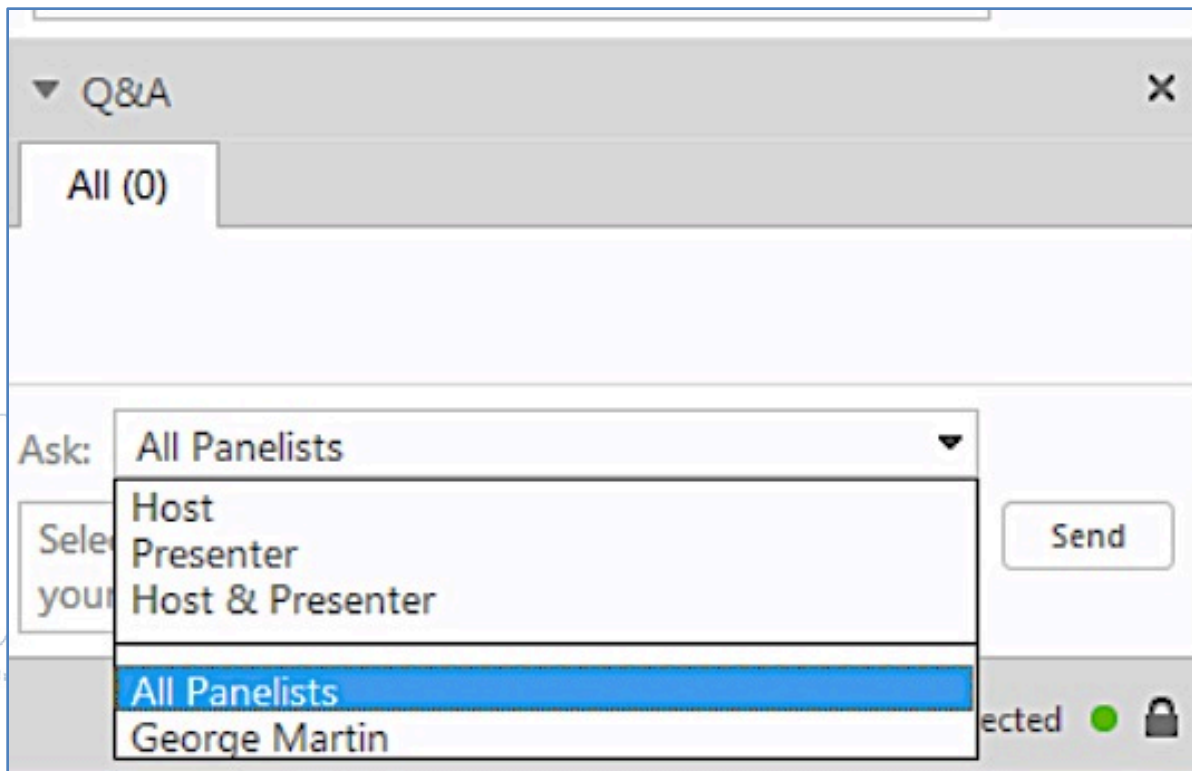
- Developer responds to application request or solicitation
- PJ can make a “preliminary award” to the developer
- PJ must document that the project meets all pre-commitment requirements
- PJ executes written agreement committing HOME funds to the developer for specific local project
 - “HOME-funded entity must be in the process of acquiring the project” (e.g. option contract)
 - Can reimburse developer eligible pre-development costs

Questions



To submit a written question:

Click on the **Q&A tool** in the top menu bar. Type your question in the text box provided and click “Ask all Panelists”



Recent & Pending Guidance

- Recent Guidance
 - Notice CPD-15-11: Req. for the Development and Implementation of HOME Underwriting and Subsidy Layering Guidelines
 - HOMEfires Vol. 13, No. 1: Receiving credit for commitments not in IDIS prior to 24-month deadline
 - HOME FACTS Vol. 6, No. 2: HOME IDIS Grant Based Accounting Changes: Updated process for committing and disbursing HOME funds in IDIS
- Pending Notices on
 - Written Agreements, Cost Allocation, CHDOs, Homebuyer policies...

Reminders

- Check the *Deadline Compliance Status Report*
- Sign up for HUD Exchange email list
 - www.hudexchange.info/maillinglist
- PJs, talk to your Field Office
 - Other participants, talk to your PJ
- Please complete evaluation
 - Link will open upon conclusion of webinar
- Thank you for your time and attention