Requirements for Committing HOME Funds

HOME Webinar Transcript
Tuesday, May 10, 2016

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Finally, as with all recorded events, the information presented may not remain current over time as HUD guidance and/or regulations are updated. If in doubt, PJs should always contact their HUD Field Office for clarification.

(Slide 1) Mandy Wampler: Good morning or good afternoon, whichever it may be for you, and thanks so much for joining us today to discuss the requirements for committing HOME funds.

(Slide 2) My name is Mandy Wampler, and I'm an Affordable Housing Specialist in here in the Office of Affordable Housing Programs at HUD. I spend a lot of time working on the topic of HOME commitments, fun for me, and I really hope that you find this presentation helpful. I'm joined today by…

Steve Lathom: This is Steve Lathom. I'm from TDA Consulting. I'm looking through the list of attendees. I've seen many of you out there in the field doing the trainings before. I'm happy to be with you today and here at HUD to help explain the new notice.

(Slide 3) Mandy Wampler: Great. Thanks, Steve. The basis for our discussion today is Notice 15-09, Requirements for Committing HOME Funds, which HUD published in November of 2015. These requirements have been in effect for a few years now, and so they should be familiar to you, but HUD's goal is to get you feeling really confident in your implementation, so that you're getting these vital requirements correct every time. Here is a quick overview of today's webinar. We will quickly remind you of the commitment deadline requirement and talk about the definition of a HOME commitment.

Then we'll move on to the meat of this presentation, which is the specific requirements for committing HOME funds. I will discuss the requirements for committing funds to programs, and I'll pass things to Steve to talk about project commitment, and all of the requirements that must be met prior to executing these commitments. We'll also separately discuss the requirements for committing funds to downpayment assistance, homeowner rehab, tenant based rental assistance, and for making commitments to Community Housing Development Organizations (CHDOs), since there are some special considerations here.

Finally, we'll offer some recommendations for what you can do to achieve timely commitments. As was already stated, there will be plenty of time at the end to answer your questions. You can submit your questions at any time through the panel on the right side of your screen.

(Slide 4) We want to start off by grounding this presentation in the statutory and regulatory framework for the HOME commitment requirement. So this really answers the question, which I'm sure you're all asking, how does HUD come up with this stuff? I promise that, when I'm done with this slide, I will stop throwing HOME citations at you, but we just really want to offer you this context.

The HOME commitment requirement is first and foremost a statutory requirement. It's the HOME statute that establishes a 24-month-commitment requirement, and this is reflected in the regulation at 92.500(d)(1)(B). Then we have the definition of a commitment at 92.2, and this defines what a commitment is including commitments to programs to be undertaken by a state recipient or subrecipient, and commitments to specific local projects. At 92.250(b) of the HOME Final Rule, HUD established additional requirements that much be met prior to committing HOME funds. This is where we find those requirements, which include underwriting, a market assessment, assessment of the developer, etcetera.

The definition of commitment at 92.2 establishes that it is a HOME written agreement that is the commitment of HOME funds, and the minimum written-agreement requirements for different types of activities and partners are found in the regulation at 92.504(c). Now finally we have Notice 15-09, which are the requirements for committing HOME funds. The purpose of this notice was really to round up all of these different but related requirements into one place, put things down into plainer language, and also to establish HUD's expectation for what PJs much do to implement these requirements. Okay. Great.

(Slide 5) So, it should be familiar to you, but let's break down this commitment deadline requirement. It has been a requirement since the beginning of the HOME program that each PJ must commit its entire grant amount within 24 months. This means that 24-months from the last day of the month HUD notifies the PJ that HUD has executed the PJ’s HOME-grant agreement funds must be committed.

For example, if HUD signed the agreement on July 15, 2016, the 24-month period to commit funds would end on July 31, 2018. Failure to commit funds by the required deadline will result in reduction or recapture of funds that are not committed by the deadline, and since this is a statutory requirement it cannot be waived. Currently HUD does use a cumulative method for determining a PJ’s compliance with the 24-month commitment requirement, but HUD is undertaking rulemaking to change to a grant based or grant-by-grant method of determining compliance with the requirements. We're not going to talk more about this today, but there are a lot of resources available to you about this change, and we will highlight them at the very end of this presentation.

(Slide 6) So if a PJ must commit HOME funds within 24 months, the next question is well, what is a HOME commitment?

A HOME commitment is a HOME written agreement that complies with 92.504(c). 92.504(c) establishes specific provisions that must be included in HOME written agreements with state recipient and subrecipients; with project owners, developers, or sponsors; with contractors; and also with beneficiaries such as homebuyers and TBRA recipients. The written agreement must be a legally binding agreement that is fully executed, so it must be signed and dated by all parties on the signature page of the agreement. We have seen many agreements that are only dated on that very first page, and this does not constitute a dated signature. These dated signatures are just really important since it's the last dated signature that is the commitment date. It is this date that will be used to determine whether or not a commitment has been made prior to a PJs 24-month commitment deadline.

The HOME regulation differentiates between two different types of commitments. The first, commitments to programs to be undertaken by an eligible state recipient or subrecipient, and the second, commitments to specific local projects. And Steve and I will be breaking this down into lots of details for you.

(Slide 7) Let's talk about each of these types. State recipients and subrecipients are permitted to administer all or a portion of a HOME program on a PJ's behalf. In these instances, it is the written agreement between the PJ and the state recipient or subrecipient to use a specific amount of HOME funds to undertake a HOME program that is a commitment. If the PJ is not using state recipients or subrecipients, then the PJ is directly administering its programs and undertaking projects, usually by awarding funds to developers and directly to beneficiaries.

In these instances, it is the written agreement for the specific local project that is a commitment. The HOME regulation does require that the written agreement be executed with the owner of the project. And of course, we will talk in depth about all of the pre-commitment requirements that must be met when making project commitments.

(Slide 8) As we've established, Notice 15-09 outlines the requirements for committing HOME funds. In this notice we do include two checklists, that you can use as a tool for ensuring that all of the requirements have been met. Though HUD establishes these requirements, we leave it up to the PJ to establish its own policies and procedures, its own standards for implementing the requirements.

As the PJ, you must have in place an underwriting policy, a policy that guides your market assessment and determination of market need, etcetera. You must have a procedure which outlines how you will perform these actions, and when, and at what you will look, and how you will document. HUD really wants to stress the importance of documentation. This is how you demonstrate compliance, and if there is no documentation, unfortunately, it's like it never happened. We also want to stress how important it is to sign and date your documentation in order to establish when the action occurred, i.e., when compliance with the provision was achieved.

HUD will need to see that the pre-commitment requirements have been met prior to execution of the written agreement, and we will look to the date of your documentation to make that determination. So again, you're probably sensing a theme. Perform your action, document your action, sign it, date it, and put it in the project file.

(Slide 9) Okay. We're not too far into things, but we do want to make sure you're still with us, and we're curious to find out who is on the call with us today. So we have a pool, one poll. And we just want to know who is on the webinar today? Are you a PJ, a state recipient or a subrecipient, CHDO, developer, HUD staff, TA provider, or are you somebody else?

Steve Lathom: ~~So we're just going to give a few more minutes for everybody to respond and then we'll close the poll and see what the results are. [Pause] I think the poll has gone ahead and closed. So Sandy, can you publish the results, please, and we'll see what we've got. [Pause].~~ So it looks as though, of the 693 people or so, who were on the phone, over 400 of you are PJs, so, the biggest group, which is exactly what we'd expect. We've got about 41 state and subrecipients, about six of you are CHDOs, another eight developers, several HUD staff throughout the country. We see a lot of folks not only from headquarters, but from the various field offices, some TA providers, and then some other hangers on. We're glad to have you regardless of what your role in the program is, so I think that's a good mix.

Mandy Wampler: Great. Thanks, everyone, for weighing in.

(Slide 10) We're going to move on. In this section we will dig a little deeper into commitments to program to be undertaken by state recipients or by subrecipients.

(Slide 11) So what is an eligible recipient or subrecipient? A state recipient is a unit of general local government designated by state to receive HOME funds, and so obviously only state PJs can fund state recipients. Only state PJs can fund other units of local government. A subrecipient means a public agency or nonprofit organization selected by the PJ to receive HOME funds and administer all or some of the PJ's programs. One clarification that was made in the new HOME final rule is that if a PJ controls the entity, then this is not a subrecipient relationship, and a program commitment cannot be made.

So we see these instances in which a PJ funds its social service agency to administer a TBRA program. This is fine. It can be done through the execution of an MOU, but this is not a subrecipient relationship, and so this is not a program commitment. The commitments must be project commitments. We also want to clarify that an agreement between the lead entity of a consortium, and a consortium member is not a commitment unless it is also for a specific local project. This is not an award between the consortium and another entity, but rather it's a reallocation of funds within the consortium.

(Slide 12) When using state recipients or subrecipients to administer HOME-funded programs, funds are committed with the PJ has executed a legally binding, written agreement with the entity to use a specific amount of HOME funds to produce affordable housing, provide downpayment assistance or provide TBRA assistance for example. So if a PJ is providing a subrecipient $100,000 to undertake a downpayment assistance program, the $100,000 is considered committed at the time the subrecipient agreement is executed. The PJ receives commitment credit towards this 24-month commitment-deadline requirement for the full $100,000 at that time. Again, the written agreement must be legally binding and fully executed. It must comply with the written agreement requirements at 92.504(c).

And while the written agreement does not need to identify specific projects with project address, it does need to include a sufficient amount of detail, and it must describe the amount and use of HOME funds, the types and number of housing projects to be funded, and have a schedule, a budget, etcetera. In turn state recipients or subrecipients will execute a written agreement for specific local projects. While the funds are already considered committed, the project will still need to comply with all of the pre-commitment requirements before the written agreement is executed for each specific projects. And these pre-commitment requirements, there's a whole list of requirements, which Steve is going to talk, here in a minute. I also want to make the point that when a state PJ funds a state recipient, that state recipient can in turn fund an eligible subrecipient. So a state can fund a county as a state recipient; the county could fund a local nonprofit subrecipient; and that local nonprofit subrecipient would then, in turn, fund individual projects.

(Slide 13) Certain kinds of agreements do not qualify as program commitments. This slide should seem like a summary slide at this point. Again, an agreement between the PJ and an entity which the PJ controls is not a program commitment because the entity is part of the PJ itself. Also again, an agreement between the consortium lead entity and a member is not a commitment unless it is project specific. In addition, there are a whole range of local documents, which may obligate funds or designate a project to receive funds in the future that do not constitute a commitment for the purposes of the HOME program and meeting the 24-month commitment deadline. Just because the program commitment is identified in PJ's annual action plan or has been approved through council resolution, this does not reflect the commitment of HOME funds until the written agreement is executed.

(Slide 14) Great. Thank you. I will turn things over to Steve.

Steve Lathom: Well, thanks, Mandy, and hello again, everybody. As Mandy indicated, we're going to spend the next several slides talking about the requirements for project-specific commitments, or commitments to individual projects. This section will cover the requirements, which much be met before a PJ can execute a written agreement committing HOME funds to a specific local project. These requirements, which were implemented in the 2013 HOME Final Rule and became effective on August 23rd of 2013, are ultimately meant to ensure that PJs are funding viable projects that can meet all programs and successfully serve low-income beneficiaries for the entire period of affordability. Many of these requirements, such as market assessment and project underwriting, were already part of many of your programs, so in some ways the inclusion of these requirements and the rule really served to reemphasize and reinforce best practices, which are now simple requirements of the program. So let's go ahead and move on to those.

(Slide 15) First and foremost, there has to be an identifiable project, that is, we can point to the address or the legal description of the property, upon which the project will take place. If you think about it, this really makes sense because how can you perform the other pre-commitment requirements, such as an environmental review or a market assessment before you know where the project will actually be.

This is also a good place to point out the definition of a project. In Section 92.2, allows for was we often refer to as multi-address projects or sometimes scattered site projects. A project, as defined by the rule, includes a site or sites, which are under common ownership, common management, and a common plan of finance and are being undertaken as a single undertaking.

So we're not saying that every commitment and every written agreement is for just one building site and one building, one building and one piece of property. There's some flexibility here. For example, a PJ could set up a for sale subdivision, which is likely to involve several homebuyer units as a single HOME project. Or a rental project that involves multiple units on multiple pieces of property is often, really, a single project because it's owned, financed, and managed together as a single undertaking.

(Slide 16) The next requirement is that the PJ must assess the market for the project and determine that there is, in fact, demand within the neighborhood for the types and the number of units that are planned as part of the project. Here we have to look at the whole project, not just at the HOME-assisted units in the projects because, of course, if the HOME units go and the other don't, we're still going to financially have a failed project. HOME is first and foremost a production program, and in some cases, we've gotten ourselves in trouble in the past by trying to use HOME to create demand in weak markets. Obviously revitalization is an important HUD goal, but other funding sources like Community Development Block Grant (CDBG) or more well suited to revitalization efforts. With HOME we have to be focused on producing affordable housing where the demand already exists.

There are several points I want to make, when we talk about market assessment. The first is that the requirement for market assessment only applies to development projects where we're reducing for-sale homebuyer units or rental housing. The market assessment requirement doesn’t apply to owner occupied rehab or to stand-alone DPA projects because, in both cases, the low-income beneficiary and the unit are already matched up. The other point to make for development projects is that PJs have options for how they're going to meet this requirement.

You could require a third-party market study prepared by a qualified professional and especially for larger multifamily projects most of you are likely to do that, but HUD is not specifically requiring a market study. The assessment process needs to be relative to the scope of the project. For example, it wouldn't make a lot

of sense to do a professional market study to assess the demand for two or three new units being proposed by a local Habitat chapter where all three units are presold, and there's a pipeline of additional buyers waiting in the wings just in case one of those first three falls through. So you've got options to make this appropriate for the types of project you're taking on.

The next point is that, as the PJ, it's your job to assess and sign off on the market assessment, but you can push some of the work down to the developer or to the applicant requiring them to submit market data that you'll review.

You can also coordinate with another funder. Perhaps you're a local PJ and you want to piggyback on the market study that the state PJ or the state tax credit allocating agency is going to order. But no matter what, HUD requires the market assessment in your file to be dated, and in most cases the assessment should be less than 12 months old at the point you commit to the project. This doesn't mean that a whole new assessment is always required just because it's been 12 months and a week, but markets are dynamic, and if the data is more than a year old, it's really in your best interest to make sure that nothing has changed in the meantime that would call the project's viability into question. In some of our markets things are moving so quickly that even six months might be too old, so you've got to make some decisions there.

The point is that, as the PJ, you need to define in your policies and procedures what data you’re going to look at, who needs to prepare, and the standards against which you'll review it. In one sense you're the one who's going to grade the homework assignment, even though somebody else, the developer, another funder, a third-party professional, might be the one who actually writes the paper, but in all cases your file must document that you've reviewed the market assessment and affirmatively determined that it's acceptable and the demand is sufficient.

Finally, whether you're ordering a market study directly using a consultant to help you assess the market, or developing an in-house assessment of one sort or another PJs can charge the cost they incur as either administrative costs, or what most of you will do while you can, as project-related soft cost.

(Slide 17) The next point, about which we need to talk, is environmental review. HUD's environment review regulations in Part 58 generally prohibit a PJ from committing any funds to a project until it's completed the required environmental review process.

For development projects this will require, at a minimum, a determination of exemption, or in most cases you'll probably get to the point of needing to submit a request for release of funds and receive the authority to use grant funds from HUD. Not only that, but prior to the completion of the environmental review process, the applicant, usually the developer and all other funders are prohibited from taking any choice-limiting action, whether using federal or nonfederal funds.

Choice-limiting actions generally include actually purchasing the property or any other activity, which would physically alter the site, starting demolition, clearing the site of vegetation, digging foundations, etcetera. That's the starting point, but there is a small exception. As outlined in Notice 15-09, but also in greater detail in CPD Notice 01-11, HUD does allow a PJ to issue what we call a conditional commitment pending completion of environmental review. Try to say that six times really fast.

This is a special flexibility under the HOME program in order to help accommodate the 24-month commitment deadline. The environmental review should always begin as soon as you know there's going to be HUD assistance in the project, but HUD recognizes that sometimes PJs face delays in completing the environmental review process, so PJs are permitted to make conditional commitments pending completion

of environmental review for the purpose of meeting the 24-month commitment deadline. There are several important points of caution here. First a conditional commitment is different from a preliminary award which we'll talk in a few minutes. As defined in the notices a conditional commitment has to meet all of the other requirements for a project-specific commitment. The only remaining contingency is the successful completion of the environmental review process.

So all of the other requirements, about which we've already talked, and the others, which we still need to, like underwriting and ensuring there are firm commitments for other project funds, still apply. Additionally, there's specific language, which is repeated in both notices, that a PJ needs to ensure is in the written agreement for the conditional commitment. This give you the right to cancel or modify the projects based on the results of the environmental review, and it otherwise clearly states the prohibition against the applicant taking choice-limiting actions prior to the full clearance and removal of the environmental contingency. Additionally, when securing other financing prior to the completion of environmental review, owners, developers, sponsors or other applicants need to make sure that all awards and commitments of other non-HOME, non-HUD funds, are conditioned upon the receipt of the HOME funds.

I really want to emphasize that HUD strongly suggest PJs use the exact language provided in the notice when making conditional commitments. Also if it looks as though you're going to need to execute a conditional commitment, we'd suggest that you talk to your field office in advance. Given the sensitive environmental issues involved, you want to get this right in advance of the deadline, and not find out you've made a mistake which can't be fixed once the deadline is past.

Next, while HUD does count conditional commitments towards the PJ's 24-month commitment deadline, conditional commitments cannot be entered into IDIS until you've actually received the authority to use grant funds or have otherwise completed the environmental review process. If you've made a conditional commitment, which has not yet been converted to a full commitment before your 24-month commitment deadline, the hard copies of that file and the commitment will be subject to HUD's review and approval.

(Slide 18) The next requirement is that all project financing be secure, that is, that HOME funds can't be committed until there are firm written commitments from all of the other sources needed in the project, including any financing for the acquisition, construction-period lending, particularly in the case of rental projects for the permanent financing that's needed. And this requirement also makes sense, since HOME has always been intended as a gap funding resource.

The other funding commitments need to be in writing, and they need to be dated. Usually we're going to see documents with titles like Commitment Letters, Award Letters, Term Sheets, Letters of Intent, or the like. Regardless of the title, though, the point is that the PJ needs to review the written commitments from other funding sources.

(Slide 19) One of the key misunderstandings on this point is that HUD does not require that all of the other funds have closed. The commitments for other funding need to provide in enough detail for the PJ to substantively determine that they're consistent with the PJ's underwriting of the project, that is, the financial picture is consistent between what they've told you in their application, and what they're tell somebody else. Also you want to see that, for example, the terms of the permanent mortgage line up to what you've underwritten.

The PJ also needs to review the other details of those commitments to make sure there's nothing that's inconsistent with other HOME program requirements. For example, if a construction lender's commitment

outlined an expectation that for-sale units were being sold to any willing buyer regardless of income, we'd have a problem since we know that HOME has to be income-restricted in who we sell to.

Finally, and I think in some ways this is really the most important one, the PJ needs to determine that all other funding sources can be expected to actually close prior to the PJs disbursement of HOME funds. I say this is the most important because, as a PJ, if you enter into a commitment based on your good faith evaluation the other funding commitments are firm, and something still falls apart at the last minute, you've protected yourself by not actually disbursing HOME until the financing closes. Closing is the point--if you've ever heard me talk about this in a training--where all of the funders, the lenders, the equity providers, the other public funders, what have you. That’s when we all link arms and jump off the cliff together.

My point here is that it's not just a matter of ensuring that the other commitments are in place because that's the HUD requirement, but as PJ you don't want to be the first one off of the cliff, and find out that nobody else jumped in the water behind you.

And as a general observation, the inability to secure all needed financing was one of the main reasons for project delays prior to the 2013 HOME Final Rule, so there's a good reason to make sure that we're sure the other financing is in place before a binding HOME commitment is made.

One other thing to add here is that, while these criteria are generic, requiring PJs to look at the substance of the financing commitment, more so than the title on the piece of paper. When we apply these standards to projects involving low-income-housing tax credits, the notice makes clear that to consider credits as firmly committed. The project must have received a reservation of credits from the state tax-credit agency and be able to show that is has a good-faith offer of equity investment in hand. And of course, both of those need to line up to the PJ’s underwriting of the project.

(Slide 20) So at this point I'm going to take a brief diversion from our progression through the list and talk about preliminary awards. A lot of the angst around the requirement that all other funds be firmly committed prior to the legally binding HOME-written agreement, which again is the commitment for HOME purposes, has been that developers and PJs both are concerned about a chicken-and-egg problem. There really doesn't need to be. In reality this requirement essentially has PJs act in the same way that other funding sources in most projects have always acted. For example, a bank's loan isn't really committed in the sense of being a legally binding commitment until the loan actually closes.

But HUD recognizes that HOME is a gap-funding source, and that other funders especially private lenders, equity providers, etcetera, may want to see evidence that a PJ is likely to provide funding to a project before they go too far down the road in issuing their own initial commitments, again, whether those are called letters of intent, term sheets, or whatever title they're being given.

So HUD does allow PJs to issue what we refer to as preliminary awards, again, not to be confused with conditional commitments that we talked a few minutes ago. A PJ can issue a preliminary award based on its initial review of an application and preliminary underwriting of the project. In other words, you as a PJ can provide an early indication of your intent to fund the project for purposes of helping to give comfort to other potential funding sources which are looking at the transaction.

But remember, a preliminary award is not a commitment. It does not count towards the 24-month commitment deadline, it can't be legally binding, and it needs, among other items, to include the same environmental contingency language, which would be in a conditional equipment giving a PJ the option to

cancel everything based on the results of the environmental review and also prohibiting the applicant from taking choice-limiting action.

In practice as a PJ, you need to make sure that any preliminary awards you issue are tightly tied to the applicant's ability to make progress towards all of the requirements for a full commitment. Since a preliminary award is not a commitment, if a developer can't move its project along in a timely fashion, you need to be ready to move on to projects which are ready to go because otherwise your funds won't be committed in time and will be deobligated and lost to your community.

(Slide 21) So the next several items actually overlap or are tied together in a lot of ways, but prior to committing HOME funds, there must be a budget for the project, which covers the total development costs. That budget needs to show that HOME is supporting eligible project costs and that the planned HOME investment is within both, the per-unit minimums and maximums of the rule.

(Slide 22) Not only does the budget need to reflect all project costs, but it needs to show the total sources and uses. It almost goes without saying but sometimes still needs to be said that the sources and uses have to be in balance, but more importantly as a PJ, you need to review all project costs to ensure they're cost reasonable. Even if you're not paying for a given budget line-item with HOME funds, every cost in the budget contributes to a project's overall gap, so you have to make sure that all costs are reasonable and necessary even those, for which you are not specifically paying for.

(Slide 23) The next point is that the PJ has to complete its underwriting and subsidy layering review of the project. Obviously this goes hand in hand with the budget and cost reasonableness reviews, we've just discussed, but if you're going to make a distinction, what we're talking about here is the longer-term financial viability analysis of the project since projects have to remain financially viable for the period of affordability. In the case of rental projects in particular, we're looking at the revenues and expenses both initially and over time, evaluating whether the project is sustainable, balancing that with whether it has appropriately maximized the use of debt and equity sources available, and considering whether the returns or profits to the owner are reasonable given the size, scope, and complexity of the project.

As part of the underwriting review, if we're dealing with mixed-income or mixed-use projects, we'll use cost allocation to determine how many units must be HOME-designated in relation to the planned HOME investment.

Obviously the topic of underwriting is a lot broader, and broader than we can cover in any webinar really, but I do want to point out to everyone that CPD Notice 15-11 was issued in December, and it provides a deeper dive into the regulatory requirements for underwriting, and while I don't think we know the date yet, you should watch for a webinar on that notice in the near future. And finally, in the next few months we would expect that a new cost allocation notice will be published as well.

Two other things to note before we move on, as with the market assessment, PJs can conduct the underwriting review themselves. They can hire consultants to assist with the review, or they can review the underwriting review conducted by another public funder, like HUD itself or a state tax-credit agency. No matter who does that review, however, the PJ has to review the underwriting, determine that it meets its own standards, and affirmatively approve the underwriting report.

Again, in this notice HUD's laid out an expectation that the PJ's file include a signed and dated copy of the underwriting approval. Finally, for homebuyer projects, and that includes both stand-alone downpayment assistance and where we're providing assistant to buyers of unit that were developed with HOME funds,

which are not being sold to eligible buyers, PJs are required to have buyer underwriting standards and policies that also need to address not just the underwriting of the buyer but responsible lending and subordination in the case of future refinancing. Again, we can't provide a full training on this topic today, but the key point is that assistance to each buyer has to be based on an individual review of that buyer's personal circumstances, and it needs to be sized to the specific needs of the buyer. Programs that offer a one-size-fits-all approach, where everyone receives a given level of assistance, are not permissible.

(Slide 24) The next element in your review as a PJ of a project prior to commitment is to evaluate the developer's capacity including its financial capacity. So again, in the case of non-development projects that would be owner-occupied rehab or stand-alone DPA, this requirement doesn't apply, since there's no developer in those projects. When we do look at a developer's capacity, we're looking at both their ability and the financial wherewithal to support the project.

In terms of experience PJs should look at the experience of the staff involved. Have they successfully done projects of this sort before, does their background provide the skills and knowledge needed to fulfill their responsibilities in the proposed project, have they received appropriate training, etcetera? And does the organization have a history that suggest it can support the project, provide adequate direction to the assigned staff, and manage the many relations with the development team, with other funders and with the community as a whole that are to be successful as a developer?

Then we need to look at the financial capacity of the developer. Beyond just having financial systems in place, which allow you to track the expenditure of HOME and other project funds, does the developer have enough net worth to support the project especially if something goes wrong. And while net worth is great, you need to also look at a developer's liquidity and access to working capital, which is often going to be needed to pay bills in the meantime, buffer delays in reimbursement or otherwise make sure there's cash available to keep the project going if something goes wrong.

The standards PJ's develop both in terms of the experience and the financial capacity of developers will necessarily vary based on the size, scope, and complexity of the projects included in your local program. What you look for from a developer that wants to do a couple of for-sale homebuyer units, will be quite different than what you want to see proposing a large multifamily rental project, which involves 16 different layers of financing. Those are very different types of projects and very different risk profiles.

As a PJ, you also need to determine what sorts of information you're going to require as part of your application not just because you need to document your file, but because you really want to make a good decision. Most of you already do this, so we're not necessarily talking about a lot of new processes, but you're likely to be looking at corporate profiles, listings of real-estate owned, resumes of key staff of development-team members, balance sheets and audited financial statements, and other similar items.

Remember it's not always just what's on the resume, you've got to do some additional due diligence. Talk to other PJs, who have worked with the developer. If you're an agency that has some internal silos, talk to you monitoring or asset-management staff who are responsible for reviewing the developer’s prior projects. The bottom like, as the old saying goes, is trust, but also verify.

(Slide 25) Beyond the various financial reviews, projects also need to evaluate the project schedule. Projects are required to start construction within 12 months, so you need to be able to demonstrate the likelihood of that based on the proposed schedule; it's feasibility given the scope the project; the project's stage of planning; the status of the environmental review, when we're talking about conditional commitments; etcetera. Most of the construction start will take care of itself if you've met all of the other requirements.

(Slide 26) Beyond starting, we also have to be concerned about the completion of the project and occupancy. As we know the 2013 HOME Final Rule introduced new project completion and occupancy deadlines.

When evaluating the project schedule as well as the market assessment, PJs need to ensure that they believe the project can be completed and occupied within the regulatory deadlines. Every HOME project must be completed within four years of the date of commitment. That's the date of the last signature on the written agreement as we've heard a couple of times.

In the case of homebuyer projects, we talk about the nine-month sales deadline. Any homebuyer unit this isn't subject to a ratified sales contract with a low-income buyer within nine months of construction completion has to be converted to a HOME rental unit or the funds need to be repaid. While the project must be under contract by the nine-month deadline, the actual closing can occur beyond that point since often there are delays in closing that may well be beyond the control of either the buyer or the developer. A key point here to understand is the nine-month sales deadline falls within the overall, four-year project completion deadline.

Things are different for rentals. For rental projects there's an 18-month occupancy deadline, which is actually outside of the four-year completion deadline. It's measured from the project completion, not from construction completion. If HOME units having been occupied by the initial tenant within six months of project completion, HUD will require a PJ to report on marketing efforts and progress towards the lease up. If any of those units have not been initially occupied within 18 months, then the HOME funds invested in those units will have to be repaid.

(Slide 27) The final step in the process is entry into IDIS. And we often talk generically about the activity setup in IDIS as if that's the commitment, but it isn't. PJs are, of course, expected to set up activities in IDIS in a timely manner, but as we talked about earlier, the formal commitment is in fact the written agreement itself, and the date of the commitment is the date of the last signature on the agreement.

So when HUD has to do a detailed review, they're going to look at the actual written agreement, but for most reporting purposes, IDIS entry is used as a proxy for the commitment date. Every month HUD issues a deadline compliance status report that tracks each PJs progress toward its commitment and expenditure deadlines. That report is based on data entered into IDIS, and it calculates any shortfalls, that you have, in your commitments or your expenditures. So PJs should review that report to track their status. You can also use the PR 27, which is a PJ-specific report of the same information, but that's actually updated each day, and so the information in that report is accurate as of the close of the IDIS system's day, the day before, whereas the national report is done on a month-by-month basis.

As of the date of a PJ's commitment deadline if IDIS shows a shortfall, the PJ can submit hard copies of any conditional commitments pending environmental review because remember those can't be put into IDIS, as well as, any other commitments, which could include program commitment like Mandy talked about earlier, or project-specific commitments that were properly executed, but due to some administrative delays may not have been entered into IDID prior to the deadline. Any time you have to submit those hard copies, HUD's going to look very carefully and you need to demonstrate that you've met all of the pre-commitment requirements and that you've executed a valid written agreement.

Here I also want to point out that HOMEfires: Volume 13, Number 1 was published in April, and that goes into greater detail talking about how HUD will evaluate commitments that were not yet entered into IDIS as

of the commitment deadline, so we're not going to go through all of that HOMEfires here, but I just want to point out to everybody that it's there, and if you've not yet reviewed it, you should take a look.

(Slide 28) Again, a lot of this is going to be obvious, but just as Mandy covered earlier, let's be clear one what is not a project commitment. Inclusion of a project in the action plan, inclusion of a project in some sort of a city council resolution or the PJ's general budget. Those aren't commitments, neither is any sort of award letter or letter of intent that sometimes gets issued based on the action plan or based on the inclusion of a project to the budget. As we've stated a few different times preliminary awards are not commitments and do not count for the 24-month deadline.

Also any commitment that's issued before the environmental review process is complete and that doesn't actually satisfy the requirements for a conditional commitment pending completion of environmental review would also be an ineligible commitment.

(Slide 29) So before we move on, I think we've got another poll here. We'd like to just only have the PJs respond to this. What we're interested in knowing is which of the pre-commitment requirements have been most challenging for you to implement or get your minds around. Conducting a marketing assessment, assuring that other funds have been firmly committed, doing the underwriting—the dollars and sense financial analysis—or assessing the developer's capacity. We'd just like to get a sense of where it is that you feel as though you've struggled or where you could use additional support.

I think the poll is open, and we'll give about 30 more seconds or so for people to respond to that. [Pause] ~~We'll go ahead and see if we can get the poll results published. [Pause] We'll get a sense of how everybody's feeling about these different issues. [Pause]~~ While we're waiting for the poll to, kind of, get published, what I would like to do is to remind everybody you can go ahead and submit your questions through the Q&A feature. It looks like, of the people responding, the biggest challenge or the biggest area of kind of concern has been around this issue of ensuring that all other funds are firmly committed. That had 135 responses, and then next up was doing the actual underwriting the dollars and sense financial analysis. That was the next most popular.

Then pretty on par with one another were the market assessment and the developer assessment. That's useful information for us to know as HUD continues to look at what sorts of training, technical assistance, and guidance to try to put out, to try to provide as much support as possible to PJs. So I'm going to turn it back over to Mandy for a few minutes, and then I'll come back and talk to you some more.

(Slide 30) Mandy Wampler: Hello again, everybody. We had a bunch of people not respond to the survey, so I hope that you're all still with us. In this next section, we want to talk about those activity types, which do not involve development, and for that reason the requirements for committing HOME funds are a bit different from what Steve just discussed. We will also talk about commitments to CHDOs, since while they do involve development, there are some special considerations to keep in mind.

(Slide 31) PJs can fund direct homebuyer assistance, which is typically downpayment assistance or closing-cost assistance provided as grants or loans directly to the buyer who goes out and identifies a unit to purchase in the private market. If the PJ is administering the homebuyer assistance program directly, then HOME funds are committed with the PJ enters into written agreements with individual homebuyers. While the PJ may prequalify buyers, HOME funds cannot be committed until the buyer has identified a specific property with a specific address and the other funding is secured. There is an additional requirement that the homebuyer itself be underwritten. This underwriting is to determine the appropriateness of the amount of HOME assistance and ensure that it is no more than is needed by the buyer, and also that it is enough to ensure

financial sustainability. The PJ must establish its own underwriting standards. This requirement is at 92.254(f) of the HOME Regulation.

(Slide 32) For PJs who are undertaking homeowner rehab programs, again, this is not a development activity, and so it is not subject to the market assessment requirement or the requirement that the PJ assess the developer's experience and financial capacity. This makes sense that these requirements do not apply because the market demand is already implied. There is an owner of that property. Also the owner will be selecting a contractor directly, so there's a different set of considerations here. But there are other pre-commitment requirements, which do still apply, such as the need for a budget and a schedule, the requirement that all financing be secured, and also an analysis across reasonableness.

And if the HOME assistance is being provided as an amortizing loan to the owner then there must be an underwriting analysis to ensure that the ownership will be financially sustainable.

We do want to acknowledge just quickly that because of the underwriting requirements, PJs may not be able to qualify all owners in need of assistance. Since all HOME-funded, homeowner rehab must bring the unit into full compliance with property standards and cannot be used for special purpose programs such as weatherization, the level of assistance required may not align with the PJ's policies. In these instances, you should consider other funding sources, which can be used to assist the owners, such as CDBG or other local funding sources.

(Slide 33) For those PJs who are using their HOME funds for tenant-based rental assistance, we want to make sure you understand very clearly the point at which funds are committed. If a PJ is using a state recipient or subrecipient to undertake the program, then funds are committed when the written agreement is executed with the state recipient or subrecipient. For example, if a PJ is providing $200,000 to a subrecipient to administer TBRA on its behalf, the $200,000 are considered to be committed with the PJ executes the written agreement with the subrecipient.

In contrast, if the PJ is operating the TBRA program directly, the funds will be committed in small amounts at a time, so, in drips and drabs so to speak. Funds are committed when the PJ enters into rental assistance contracts with the tenants or with the property owner.

(Slide 34) Now we're going to discuss requirements for committing funds to CHDOs. This is a bit of an outlier topic in this section because CHDOs do undertake development projects, but again we want to draw out some of the special considerations when committing funds to CHDOs.

First of all, and very important is the fact that PJs can only make project-specific commitments of funds to CHDOs. When committing CHDO set-aside funds, the CR Funds. The term reservation still exist, since it is used in the HOME statute, but when we say reservation, we're really saying a commitment to a specific local project. This means that all of the project specific commitment requirements that Steve discussed must be met prior to executing the written agreement for a CHDO project. In addition, the PJ has other responsibilities.

A PJ must certify that the CHDO meets the definition of a CHDO at 92.2 and has staff with capacity appropriate to the project and in accordance with the CHDO specific role as owner, developer, or sponsor. So this is another case of documentation and how important it is. When you're qualifying and certifying your CHDO, make sure that that certification is documented, dated, and goes into the project file. We mentioned before, but we'll say it again that the written agreement must be executed with the property owner, and in CHDO-sponsored transactions, the PJ must execute the written agreement with the ownership entity.

(Slide 35) One more slide on CHDOs. There are additional types of CHDO commitments that also count toward the 24-month-commitment deadline, and we wanted to quickly highlight them here.

For commitments that have been entered into IDIS, the PJ is automatically getting credit for these. But as an FYI, they also include CHDO operating awards and CHDO predevelopment loans.

When funding a CHDO with CHDO set-aside funds or CR funds, that 15 percent set-aside, the commitment must be a project-specific commitment of funds, but remember that CHDOs are also nonprofits and may act as nonprofit subrecipients. In this way they can be funded to undertake a program on the PJ's behalf. In funding a CHDO as a subrecipient, the program cannot be funded from the CHDO set-aside, and will be funded with the SU subfund instead. Okay.

I'm turning things back over to Steve.

(Slide 36)
Steve Lathom: We're starting to get closer to the end of the formal presentation, and obviously we've been getting some questions already. We're going to spend some time on Q&A in a few minutes, so you can continue to submit those questions, but first we want to step back and provide some thoughts for PJs who might be trying to figure out how to adjust their local processes to meet both the commitment requirements and to make sure that your funds are being committed within the 24-month deadline because obviously, there's some tension there.

(Slide 37) So the first thing I want to note is it's really important to make sure that you've got a healthy pipeline of projects that are working their way through the predevelopment process. Of course, this is a lot easier said than done, and for some of you it's easier than others.

Some PJs especially states may have a large pool of potential applicants each year where you have the chance to pick among projects to choose those that are really ready to go, but many local PJs especially those of you with smaller programs and fewer development partners to work with may have to do a lot more work informally, and you may need to do it farther in advance to identify projects and help bring them along to the point of a commitment.

Of course you still have to manage the consolidated and the annual action-planning processes, so there are limits on your ability to forward allocate funds for specific projects and activities. But that said, for some of you, we want to point out that PJs can, and many PJs do solicit initial project and subrecipient applications ahead of developing the annual action plan. They then use the results of those application rounds to inform the planning process and identify specific projects.

Some of you have traditionally used the action plan to identify general categories or types of projects you intend to fund, and then you take your applications later often once you've received your annual HOME allocation from HUD meaning the 24-month clock has already started. So the point here is that there are ways to get started earlier in the process to sort of not chew up as much of that clock.

Another challenge we hear in the field from PJs from CHDOs from developers and other program participants is that the application timing for various programs including HOME-tax credit, Federal Home Loan Bank, USDA, and other sources, which often get used in combination with one other, don't always line up from a timing standpoint. Again, this is an issue that's a lot easier to identify and diagnose than it is to solve, but the point is that as you step back and think about ways that you might want to revise your process, at least try

to be mindful of the timelines for the other usual suspects and try to align your process so that we're all playing as well as we can in the same sandbox.

(Slide 38) We talked about preliminary awards earlier, but I do want to come back to them at this point. Some of you have been already doing this in one form or another, but I just want to reiterate that while you can't enter into a legally binding agreement prior to meeting all of the commitment requirements, about which we've talked today, that doesn't mean that you can't provide evidence of your intent to move forward with a project that a developer can use to show other potential funders, be those banks, tax-credit allocators, equity investors, or the like. As I said earlier, PJs need to do this in a way that's similar to how those other sources operate for themselves.

I've never seen a written commitment for a construction or permanent loan for example that wasn't mutually contingent on all other funding sources actually coming together at closing. But the further you are in your process having completed initial underwriting reviews based on clear assumptions about the amount, the terms, and the structure of other sources, being able to clearly articulate your understanding of the project and the terms upon which you'll eventually be able to make a full HOME commitment, and outlining the performance benchmarks that must be met to get there. The more you can do along those line the more weight your preliminary award will carry with other funding sources.

But remember that it's also important to remember the distinction between commitment and closing. Those are different steps in the process, and for many of you they are closer together than they were in the past given the increase formality and rigor of the expectations for commitment, but you can still enter into your written agreement prior to the actual closing once you've met all of the requirements outlined in this notice. The key to remember is that you should not actually disburse funds until everyone is closed, otherwise you'll still run the risk that some last-minute problem results in the loss of another funding source, and if you've disbursed, you've now got a project underway that has a gap in it.

(Slide 39) The next issue to point out relates to project costs that were incurred prior to commitment. When the rule was updated in 2013, a new provision was added in section 92.206(d)(1) that allows a PJ to use HOME to reimburse a project owner for certain predevelopment costs, those associated with architectural engineering or other related professional services that were needed to prepare plans drawings or work write ups. As a general rule HOME can't be used to pay for costs that were incurred prior to commitment, but as we spent a fair amount talking about today, there's a lot that goes into getting to that point. Developers necessarily incur predevelopment costs. To some degree there's a bit of a catch-22, so in the 2013 HOME Final Rule, HUD was trying to provide some flexibility to address this.

If a PJ is going to allow the owner to draw HOME funds against these predevelopment costs, you need to specifically call that out in your written agreement. The cost must have been incurred no more than 24 months prior to the commitment date, so this isn't a way for a developer, who's been working on a project through multiple iterations over many years to try to get all of those costs back. And like any other cost, you have to determine that the predevelopment costs which you're reimbursing and including in the total development costs of the project are in fact necessary and reasonable costs to the project.

Just too perhaps preempt some questions, which we would could get on this point, it's only these sorts of predevelopment design and professional services costs that can be reimbursed. There are other costs that an owner may have incurred prior to commitment. In some cases, they've even purchased the property assuming that was done prior to application or subsequent to the completion of environmental review that are still often necessary and reasonable parts of the overall project budget, but if they were incurred prior to

commitment, they can't be reimbursed with HOME funds. Instead another source of funds would need to be identified to pay those.

For example, it might be that those costs get paid from the proceeds of a construction loan, or in some cases, the owner might be expected to carry those costs in the interim until a permanent loan closing or in the case of for-sale homebuyer projects perhaps the sale of a house. So like some of the other things about which we're talking, this piece of flexibility in the rule won't solve all of the challenges, which exist out there, but it can be one element of helping put together a local process that works for you and for your partners.

(Slide 40) Let's just put all of those pieces together. As a PJ, you may be able to move your application process up, taking applications earlier to help inform the annual action plan instead of taking applications after you've received your annual allocation from HUD. Based on a developer's application and your initial review, which should include as much underwriting and project review as possible, you can issue a preliminary award, which the developer can then use to help convince other funders, banks, tax-credit agencies, investors, etcetera, that the project is likely to receive HOME funds. The preliminary award should anticipate what that other financing will look like based on your underwriting review, but you might need to adjust your evaluation as everything comes into sharper focus. At the end of the day, the development process and the underwriting process is circular more so than its linear, even though we have to talk about it in a linear fashion in many regards.

Once all of the pre-commitment requirements we've been walking today have been met, then a binding HOME commitment can be issued, meaning you've executed your HOME written agreement with the project owner, of course making sure that all signatures are dated. From there when the closing itself actually occurs, one of the first HOME draws can be used to reimburse for some of those predevelopments costs the developer incurred, provided their less than 24 months old and were reasonable and necessary within the scope of the overall project.

Again, we recognize that not every one of these ideas we're talking about is going to be applicable to every PJ or to every project, and even layering all of these different options together won't magically make everything line up perfectly. But individually and together, these steps can help you ensure that you're in a position to properly commit all of your HOME funds within the 24-month deadline, which in turn will help make sure that those dollars remain available to address affordable housing needs in your community.

(Slide 41) Here I think we're going to go ahead and pause and take a look at the questions that have been coming in, and try to get some responses. I'm going to look to Mandy and some of the other HUD folks in the room to see what we want to talk about.

Mandy Wampler: Thank you, Steve. This is always the hard part because we're on the fly here. Some of this information has already been covered, but we've been getting a few questions about it, so we want to use the opportunity to reinforce a little bit of the content.

We had a question about when TBRA funds are considered to be committed, and the example, that has been given, is that a PJ has a $1 million TBRA program run by a separate division within the city. When is that $1 million considered to be committed?

Well, in this instance, because the money has been given to a division within the city, this is not an eligible subrecipient relationship, and so the funds are committed when the PJ enters into rental assistance contracts with tenants or with owners. Again, this is that really piecemeal way of making commitments. It's probably going to be, you know, $2,000 here, $2,000 there. Because it's not an eligible subrecipient relationship, the

$1 million can't be considered the commitment. Now if the PJ were committing $1 million to an eligible state recipient or subrecipient, those funds would be considered committed at the point the written agreement {with the state or subrecipient} is executed and all $1 million would be considered committed at that point.

There was a question about how to pay for the environmental review process. Steve talked about predevelopment costs that are eligible, and the cost of an environmental review would be an eligible predevelopment cost if it were identified in the written agreement. Again this would be something for which the PJ could reimburse, and it could be an eligible project cost if it's identified in the written agreement as an expense that can be reimbursed under those predevelopment costs.

Steve Lathom: Yeah. I think, Mandy, and it looks as though we're going to follow up on that later, the point is the predevelopment costs that can be reimbursed tend to be architectural and engineering or other professional services necessary to determine the scope of work. I think the environmental studies that sometimes get done are necessary to help figure out what portion of the site is buildable, versus what portion is wetlands, in some cases for example, etcetera. The other thing though to distinguish is that the developer will incur certain environmental costs, often a phase 1. I always emphasize, when I'm training this in person, to understand the difference between a phase 1 environmental assessment, which most investors are going to get, which is really about liability protection and identifying the likelihood of any environmental problems with the site.

The phase 1 environmental assessment will do a lot of the homework that's needed for the PJ to satisfy its obligations under the National Environmental Policy Act (NEPA) under the part 58 requirement, but they are separate things, so the responsibility to do the NEPA environmental assessment process to get all the way through to a request for release of funds and an authority to use grant funds if that's what the project calls for. Those are sort of internal costs to the PJ, but in order to get the information to the PJ, there are some professional services that the developer will typically incur. I think because those are related to figuring out what the physical build out of the site would be, it's reasonable to have those be part of those reimbursed redevelopment costs.

Mandy Wampler: We have Vashawn Banks here with us. He's the Director of Financial and Information Services division, and he's going to take one of your questions.

Vashawn Banks: Good afternoon, everyone. A question which we just received is asking…it says, "Does program income offset the commitment already completed and entered in IDIS, and are these amounts needed to meet commitment deadlines?"

Let me reword that just a little bit. Does program income offset commitment in IDIS, and the answer to that is PJs only need to replace available program income with HOME treasury funds at the time that they are disbursing moneys. *{**Note**: The speaker inadvertently reversed the order of the prior sentence in the live presentation. The sentence should read "… PJs only need to replace available HOME treasury funds with available program income at the time they are disbursing moneys."}* For example, HUD would like for you to always commit your treasury funds to activities. It's only at the time that the funds are going to be drawn down, that you'd need to replace, say for example entitlement funds or CHDO reserve with available program income. Similarly, if you are disbursing funds for administration, HUD would require that you replace any AD funds for an activity with PA, program income for administration.

Mandy Wampler: Great. I will ask you to take one more, we already discussed.

Vashawn Banks: Sure. The next questions is… "When you have a commitment with a subrecipient for a TBRA, you can't fund the activity in IDIS without a beneficiary. Do we have to get approval by HUD in order to have it count against the commitment requirement until such time that you have a beneficiary?"

Again, great question. The answer is commitments to state recipients and subrecipients should always be recorded as SU subgrants in IDIS, so you're going to have to create and SU subfund in the system, if you will and authorize that amount by the total of all SU subgrants which you have. Those are commitments to state recipients and subrecipients. HUD would give the PJ full commitment credit at the time such agreements are entered in IDIS. Again in this example going back to an earlier example if the PJ had a $1 million dollar, let's say, rental rehab program to a specific subrecipient, you would receive that full $1 million in commitment credit at the time the subgrant is created.

Mandy Wampler: Thank you.

Steve Lathom: So here's another question, on which I'll touch a little bit, because it has a few kind of nuggets buried in it.

Somebody asked if a CHDO runs a DPA program using the SU subfund do you sign one program agreement or a specific project agreement for each address.

Let me make a couple of distinctions here. CHDOs are sort of interesting animals within the HOME program. Of course we know that there's the CHDO set-aside, but when we talk as an organization acting as CHDO, they're doing development. So an organization that is a CHDO for development purposes--it might be building some houses for sale--if they're running the DPA program for the PJ, in that case they're kind of wearing a subrecipient uniform. So I just want be really clear that, while an organization that's a CHDO can participate both as a subrecipient and as a CHDO, those subrecipient activities like a DPA project or a stand-alone DPA program are not funded from the CHDO set-aside.

For purposes of the 24-month commitment deadline, the PJ receives commitment credit upon entering in to the subrecipient agreement with that nonprofit subrecipient to run the DPA program. Ultimately you will have to identify specific projects, individual households receiving the downpayment assistance, and there will need to be project specific written agreements with those buyers between the subrecipient and the buyer, and in most cases HUD actually strongly suggests that the PJ be a party to that agreement and have enforcement rights. So remember any time that a PJ makes a program commitment, about which Mandy talked earlier, that program commitment counts towards the 24-month commitment deadline, but it ultimately does have to lead to actual project-specific commitments.

Okay. We've got a question here, "What's an advantage and a disadvantage to using a reservation letter?"

I'm going to be very clear that I'm reading that to mean what are the advantages and the disadvantages of these preliminary awards that we've talked. The big advantage is that if you're working with a developer who needs to take some evidence to other funding partners, they need to go to the bank and say, this is not just an idea, it's not just a concept that I'm going to get money from the city to make this project work, but the city really is seriously working with me towards a HOME award, then those preliminary awards can basically show that you in fact are actively reviewing the project, that you have an intent to move forward with it. For example, you may already have it included in your action plan, it's already been through... So it basically presents good faith, which the developer can take and show to other financing parties that the HOME, which they're showing in their pro forma, is likely to actually be there. That's the really big advantage.

The disadvantage in some ways is sort of like a relationship and I would say a small “p” political disadvantage in some cases, because sometimes when you provide that preliminary award, you've got a developer whether that is a nonprofit, whether that's a CHDO, whether that's a for-profit developer that sometimes sort of thinks that that's an absolute iron-clad promise, when it really isn't. Any time you hear us talk about preliminary awards, we always say that they should be time limited, they should be tied to the project, they should be tied to the ability to move along the lines and the benchmarks of getting the other financing lined up, getting the site-plan approvals, getting the environmental review, what have you, to show making progress. So sometimes the recipient of that preliminary award kind of thinks that it's more binding than it really is. And you can have some relationship issues come up here and there.

So I think part of it's being very clear. We're giving you this to sort of show good faith to the other parties, but you have to move. This is not a sort of forever promise. This is a time-limited opportunity, and it has a clear expiration date.

We're just sorting through your questions. They're coming in hot and heavy. I think I'm going to turn it over the Vashawn for a moment.

Vashawn Banks: Sure. It looked like the person who asked the original program income question, had a follow-up, so I just wanted to address that. The follow-up question is, "Does program income have a deadline?"

As it stands right now, the HOME program does not have a program income specific deadline. What the HOME program calls for in the regulation is that PI, program income, must be disbursed before treasury funds. Again, back to the example that I used prior. If the PJs next disbursement is coming from CHDO reserve or entitlement, the expectation is that those CHDO reservation funds or entitlement funds are uncommitted from the activity and replaced with program income, or for that matter recaptured homebuyer or repaid funds, prior to drawing down any treasury fund. I just wanted to be clear. No specific deadline attached to program income, but it must be disbursed first.

Mandy Wampler: We're also lucky enough to have Ginny Sardone, the Director of the Office of Affordable Housing Program in here with us today as our silent partner, and she's going to take the next question.

Ginny Sardone: Thank you, Mandy. The next question is a really good one because we actually see that there's a tremendous amount of misunderstanding in this area, so the question is, "If a HOME loan is made to the nonprofit general partner of a LIHTC limited partnership and not the limited partnership directly, who will be the property owner? Is this allowable and considered a commitment?"

As I said, we see this done incorrectly a lot, so I'm really happy to have the opportunity to sort of clear this up. By statute the agreement for the project, so the written agreement committing the HOME funds and imposing the HOME requirements, must be between the participating jurisdiction and the property owner. So in the case of a partnership, whether it's a LIHTC partnership or otherwise, the owner of the property is actually a partnership, and the agreement must be made with the partnership, and not with one of the partners. So even though it's probably the general partner as the managing general partner, who is signing the agreement, the agreement must be made with the partnership that is the ownership entity of the project. If you haven't been doing it that way, please, make sure that, in the future, you're ensuring that the written agreement is signed by whatever the ownership entity is.

Similarly, we see a lot of situations where money, and particularly we've seen it a lot where PHA is maybe a general partner, where money is granted to the, let's say the Public Housing Authority, and then the Public Housing Authority lends it to a partnership. That is also not permissible under the HOME regulations. The agreements have to be with the entity that owns the property. I know that's getting a little bit off topic here, but it's such an important point and something, with which we run into a lot of problems that I didn't want to let the opportunity pass to sort of clarify that as well.

Steve Lathom: Let me just piggyback on Ginny's comments because, as I've been out doing the training, this issue was made explicitly clear in Section 92.300 relative to the CHDO set-aside where there's very clear language identifying that the HOME funds must be provided directly to the property owner. It wasn't necessarily clarified in the same way in other sections of the rule, but the definition of commitment requires that the PJ, or the subrecipient or state recipient which could step into the shoes of the PJ as it were, enter into the agreement with the owner, with the actual owner of the real estate. So the general starting point in all cases is that the actual title holder to the property is the one signing the agreement for the property.

Leave TBRA alone for a minute. Any project, where we're physically paying for the acquisition, the rehab, or what have you of a unit, the property owner, whether that's the low-income buyer in the case of DPA, the low-income owner in the case of homeowner rehab, or the entity that will be the owner or be the developer in the case of rental or homebuyer production projects. They must be the one signing the agreement. While we recognize that, in the past, there were people that made this grant to a nonprofit that then loaned the money to the limited partnership, that structure, whether within the CHDO set-aside or outside, is not permissible.

Mandy Wampler: We've had a few questions about signatures on written agreements, and as a reminder, all signatures must be dated signatures. We will not accept it if all of the signatures are not dated. Again, the importance of that date is that it is a commitment date, and that is how we will determine compliance with the 24-month commitment deadline and how HUD will determine that a commitment has in fact been made prior to the deadline.

There's also been a question. “Please, explain how a commitment shortfall is removed after submitting conditional commitment documents to HUD for review.”

So I will talk about this a little bit more broadly. Steve discussed in his section that agreements executed prior to the deadline, but not entered into IDIS, will count toward meeting the 24-month commitment requirement. This could include conditional commitments pending completion of environmental review, but it could also include other types of written agreements, which were eligible and executed prior to the deadline, but were not yet entered into IDIS, maybe there is an administrative delay or something to that effect, which we don't like to see we always want commitments to be entered timely. But the PJ would be required to submit all documentation to the field office demonstrating compliance with all the pre-commitment requirements along with the written agreements. The HUD field office would review and work with HUD headquarters to make a final determination and get any shortfall cleared up for the PJ. Steve is going to, in his final slide, refer you back to a HOMEfires that was recently published, which addresses that exact topic.

Steve Lathom: Here's another question that just came in, talking about dated signatures. It wants to know is a notarized signature, is that acceptable?

If I'm the one signing the document, and I don't write down next to my signature that I'm signing it on May 10th of 2016, but my signature is notarized, and the notary stamp indicates that on May 10th of 2016, Steve signed this document in front of me, that is an acceptable form of documentation. The point is that we don't want to just see the signature on the agreement, but there needs to be clear and absolute evidence as to when that signature was affixed to the document.

I think that there's another one, kind of a follow up to point I was making a moment ago about the HOME loan to a tax credit limited partnership. So when the HOME is provided directly to the tax-credit limited partnership, the question is how to credit the CHDO role. Of course, this is not a CHDO training, but CHDOs can sponsor Low Income Housing Tax Credit transactions that also receive HOME. This is outlined in section 92.300(a). I might be getting the sub-subsection wrong, but I believe that it is 300(a)(4) for those of you who want to go look it up.

But in any event, that would be a CHDO-sponsored project, and the CHDO needs to be the sole general partner in the entity if it's a limited partnership or the sole managing member if it's an LLC or a wholly owned subsidiary of the CHDO to be the sole general partner or the sole managing member. So the point is that the CHDO has exclusive administrative and effective project control over the project, even though another partner is involved in the ownership of the entity itself. Those can qualify from the CHDO set-aside, and the role would be CHDO sponsored. I'm stealing my own thunder here, but one of the things to note is that HUD will be issuing a new CPD notice on CHDOs and it will walk through those issues as well. Mandy, anything else?

Mandy Wampler: Just one quick one I see here. Is a consortium agreement considered a commitment of HOME funds?

So, as we said earlier, an agreement between a consortium lead and member must meet the standards for a project specific commitment. If it's just a general agreement for like a subrecipient agreement, that is considered an allocation of funds between members, and not a commitment of HOME funds.

Vashawn Banks: Okay, folks though, yeah. Saw another program-income related question pop up. It's in reference to the SU subgrant and CHDO reserve.

Any time PJs are replacing Entitlement, CR, SU, any treasury funds with on-hand local funds, what that's going to do is reduce your total authorized commitment in IDIS. So a couple of things there.

First of all, HUD expects that PJs should be able to anticipate any local funds, specifically program income, that's going to be recorded any year and planned to be able to meet its commitment and disbursement requirement including program income. These reductions, hopefully should not come as a surprise, but also too along with that, if you are replacing SU funds to subrecipients and state recipients, or CHDO reserve CR funds, with program income, in addition to reducing the funding, PJs should also be reducing the subgrant by the same amount. So if you're reducing an SU subgrant by the amount of program income being funded, yes, that will reduce your commitment by the same amount.

Steve Lathom: Here's another question. "Does the environmental review need to be completed before setting up and funding a HOME IDIS activity number or can it be set up as long as the environmental review is underway.

So, I hope we were clear on this earlier, but you may not under any circumstances set up the project in IDIS until the environmental review process is complete. In most cases for development projects, that will require

some level of a request for a release of funds, and HUD's issuance of an authority to use grant funds. In certain small projects it may be that you've determined that the project is exempt, but the environmental review process must be complete before you put it into IDIS. You can't set it up and get the number until the environmental review process is complete.

Mandy Wampler: If you have a categorically excluded subject to a project that has converted to exempt, then you will use your determination of exemption signed and dated in the project file to demonstrate that your environmental review process has been complete because that instance you won't have a request for release of funds, but that is still considered the environmental review process being complete for the purposes of the project such as that.

Steve Lathom: I saw another question a minute ago, and I think this may have involved the tax credit transaction, but maybe not, is "Do all members of the ownership entity have to sign the agreement?"

And ultimately not to be sort of bureaucratic about it, but that's sort of a question for legal counsel. In most cases, in the case for example of a limited partnership, the general partner of the partnership typically has the legal authority to sign the agreement on behalf of the ownership entity. So what you need to do is make sure that the signatory has the legal authority to bind the ownership entity.

In the case for example of a downpayment-assistance project, under most circumstances, if you've got, say, a husband a wife who are receiving the downpayment assistance to buy the property, I would expect that your attorney would want to see both of them signing the agreement. The answer is whoever signs it has to be able to bind the ownership entity or the entirety of the ownership of the property to the terms of the commitment.

Steve Lathom: Your questions continue to come in hot and heavy, so we're just looking through to grab a couple of more that we can address.

Vashawn Banks: Okay, so a question just came in. "If a PJ deobligates HOME funds for a subrecipient after the 24-month commitment, are the funds affected? If so, can the PJ complete the project under budget and deobligate the funds?"

Okay again, that's a good question. The way I read that is, if you have a subrecipient that undertook a specific project, a HOME specific project, and that project is completed for less than the budgeted amount, then what would happen is, IDIS would return the excess fund to the PJ's available balance, and at that point the expectation would be for the PJ to reduce the amount of the SU subgrant by the amount that it came in under balance, which would reduce the total amount committed. So just be aware of it. Actually if I could just back up one other note on that. If the PJ is intent to, because it's still based on the amount of agreement, maybe we should have Ginny Sardone weigh in just a little bit here, because the original agreement would still be for, let's say in this example $1 million, but the project is completed for $800,000.

Ginny Sardone: So the answer to this is going to vary. Currently under the cumulative commitment methodology, which we use, any time money becomes uncommitted, and let's say the PJ completes the project, the money rolls back up into whatever grant, you know, it sort of was committed from and it’s available for another project.

Once we move to grant-specific commitments unfortunately what is going to happen is any time money becomes uncommitted, for any reason, beyond the 24-month deadline for that grant, the money is going to be deobligated by HUD because it'll be beyond its deadline. If a project comes in under budget or if a PJ

decides that subrecipient or a state recipient is not performing and wants to un-commit that money and it's beyond that 24-month deadline, unfortunately the money will be lost, and HUD will have to recapture it and return it to treasury.

Vashawn Banks: Right, and thanks Ginny for adding that on because if we are talking about straight-up Entitlement fund folks, that's what would happen under this scenario is that's uncommitted money, but if we have an agreement between a subrecipient or a state recipient and the agreement will still be honored for the exact same amount, which is less the money that has been uncommitted, but you still have an agreement in place with that same recipient for that, again we're using $1 million as the example, the PJ would still be commitment credit for the additional $200,000, however if we're talking Entitlement, once the activity is completed for $800,00, instead of the full $1 million in the example we're using, that money becomes uncommitted and subject to deobligation.

Mandy Wampler: And we did mention, and just as a reminder at one point, the importance of in your state recipient and subrecipient agreements, you do have to have a schedule. You do need to have specific tasks identified, so as the PJ providing a state recipient or subrecipient with the funds, you do want to have way of holding them accountable ensuring that they're moving forward in identifying projects to fund.

Steve Lathom: Here's another question that came in that I want to address. It says "prior to 2013 HOME reservations were common"—and this is reservations to CHDOs—"Can a PJ still use a reservation to meet the HOME commitment requirement?"

So this is a really important point to understand for those of you working with CHDOs. Prior to the 2013 rule, I could, for example, issue what we called a reservation to Vashawn's CHDO organization, let's say, to say here's a $500,000. I expect you to go find five specific projects, and we will then enter into project specific written agreements as you identify those.

When I reserved that $500,000 as a PJ, I used to get credit for that towards my commitment deadline. One of the very substantial changes in the 2013 HOME Final Rule is that PJs can now only make project specific commitments. The term "reservation" is still technically in the rule, so it's a little bit confusing, but the rule now requires that a reservation meet the requirements of committing to a specific local project. So there are no more reservations.

I could do a preliminary award, which again really is an informal process, to show Vashawn's organization that I intend to be able to fund him, but only if they bring those projects, so until the specific activity is identified, we've underwritten a specific project, met all of the other requirements and entered into a full written agreement and absolute project-specific commitment, those funds are not committed. The old generic reservations are gone.

Vashawn Banks: Absolutely. Just to piggyback on what Steve just said and to put into IDIS speak, if you have CR subgrants to set aside in the system for specific CHDOs, those are no longer counted as commitments. The commitments for CHDO reserve are counted at the activity funding level.

Steve Lathom: We're just going to handle a couple of more questions before we wrap up, so let's just find the one that we want. I think this is--

Ginny Sardone: We had a question someone just asked, "When it is that HUD anticipate that we will be switching from the cumulative method for determining compliance with the 24-month commitment deadline to the grant-specific method?"

We will be doing that for 2015 grants, the year 2015 grants, so those are grants that for the most part, unless there was some reason why a grant was delayed, have deadlines during 2017. You will notice, if you have access to IDIS and you're somebody who sets up projects and commits funds, that you are now committing money from a specific grant year. Once you get into your 2015 money, you're committing specifically 2015 money, and the purpose of that is to permit us to look at compliance at 24 months based upon commitments from the specific grant.

Vashawn Banks: Just to piggyback on what Ginny's saying here, in the system, you'll notice on the activity-funding screen it's split, so you'll have two tables. The table at the top will show your cumulative amount of pre-2015, in other words 1992 to 2014 HOME grants, and the second table immediately below, will show your 2015 grants and then also any other grant-specific year, so you'll see your 2016 grant and so on and so forth being broken down by your fund types.

Steve Lathom: Okay, so just a quick note. We're kind of starting to come to the end of the planned time here. We know we can never get to every question that comes in. Sometimes they come in so fast, they scroll through and it's hard for us to even find the one. We do have a log of all of the questions submitted. Our plan is to be able to develop a series of written FAQs based on those. We would also always remind you that, if you're a PJ, feed your questions to your field office. If you're a field office and you have questions, feed your questions to the desk officer. If you are another participant in the program, a CHDO, a developer, a subrecipient, then you feed your questions to the PJ.

In addition to those questions, which we received today and maybe didn't get to and those other questions that come in, our goal is in fact to go ahead and develop a series of follow-up FAQs that we can eventually post to the website. When those things get posted, if it's a new item, presumably, we would likely be able to send a Listserv message letting everybody know that it has been done.

(Slide 42) With that, what I want to do is just to start to wrap up a couple of things. Again, there's a lot of guidance out there, and ever since the new rule came out, HUD's been issuing guidance, so we know that there's a lot of stuff coming. So in addition to this Notice 15-09, about which we've been talking today and which was published in November, in December right at the point that everybody is just waiting with bated breath to see what shows up on the HUD Exchange website right around Christmas, Notice 15-11 was issued, which goes into detail about the requirements for underwriting and subsidy layering.

Again, earlier this spring just last month, HOMEfires: Volume 13, Number 1 was issued, which talks about how to receive credit for commitments that were not in IDIS. That would include those commitments that, for whatever reason, maybe you signed it, and the person who enters it into IDIS was out for a couple of days on vacation, and it wasn't in before the deadline, or again those conditional commitments pending completion of environmental review which may not be put into IDIS. So that talks in greater detail about that.

There is a HOME FACTS: Volume 6, Number 2. It starts to talk about some of the IDIS changes for grant-based accounting. I'll briefly go off script here and let you know from the perspective of somebody who's not HUD staff, HUD deeply understands the challenges that the shift to grant-based accounting creates. There are some strange implications. This is not something that they necessarily pushed for, but this is something that was sort of required by reviews by the GAO and the OIG and those authorities that HUD has to respond to.

This is stuff that we're all learning and all getting used to. We will get through this together. I remember when lead-based paint first came into effect. Everybody, the sky is falling, the program's dead, this is never going to work. And we figured it out, and we will get through this together, but we do understand that there's a lot

of angst and a lot of questions. From the outside looking in, I can at least assure you with a slightly different perspective than a lot of you have, that the HUD staff really are trying to make this as workable as possible for you.

Also there are several additional CPD notices, which we expect to come out over the next few months, one on written agreements, another on cost allocation, a new CHDO notice that will replace the 97-11 notice, which is effectively out of date at this point, a notice on the homebuyer program policies required under Section 92.254(f), so there's a lot of additional guidance coming out.

For those of you who are working beyond just HOME, you know this office is also looking to get a lot of guidance out on the Housing Trust Fund, so there's a lot of stuff coming. Make sure that you're signed up on the, and I think this is on my next slide.

(Slide 43) So if you're not, make sure you are on the mailing list. Check your deadline compliance status report as well as your specific PR 49 and PR 27. PJs talk to your field office. Everybody else talk to your PJ. When we close the webinar in a moment, WebEx will feed you a link that should automatically open in your browser an evaluation of the webinar. We would appreciate you taking the time to fill that out.

And as I always like to say, we really appreciate your time and your attention. We know this isn't always easy, but we do hope that this helps make your job a little bit more understandable in the field, and we really do appreciate the work that you do every day to provide this funding to serve what we know are overwhelming and very pressing needs for affordable housing in markets throughout the country. We really want to make this workable, so that we can serve the folks that we're all trying to serve. We appreciate your time and your attention. We know the paperwork, we know the checklists, we know all of that aren't all that much fun sometimes, but at the end of the day it really is about is about serving the folks, and we know that you're the ones doing that, so we appreciate it.

With that I'm going to check and make sure that the HUD staff, if they've got any last words. I think they look to be satisfied. And again, we appreciate. We know some folks may have had trouble downloading the slides. We will get those slides uploaded to the HUD Exchange to the page that had this, and I think we usually are able to then, in a couple of weeks, get a recording and a transcript up as well, so I think that's the plan. Based on the questions that have come in again, we're planning to do some sort of written FAQ and those sorts of stuff. Continue to watch. Make sure you're on the mailing list. Watch the Listserv, and thank you again for your time today.

With that, I'll ask Sandy to go ahead and end the webinar, and push everybody to the evaluation link.