

Identifying a CHDO's Paid Employees

The HOME statute requires CHDO set-aside funds to be invested in affordable housing projects that are owned, developed, or sponsored by CHDOs. To ensure that CHDO set-aside funds are only provided to organizations that have the capacity to carry out and complete the projects for which they are being funded, the definition of "community housing development organization" at 24 CFR 92.2 of the 2013 HOME rule requires that, at the time it commits CHDO set-aside funds, a PJ must certify that the organization has paid employees with housing experience in the role it will undertake (i.e., owner, developer, or sponsor) for that specific project. The PJ must certify that the organization meets the CHDO requirements each time it commits CHDO set-aside funds to a project. This issue brief describes what constitutes a paid employee for the purpose of meeting the CHDO capacity requirements of the HOME rule.

Capacity and the Role of the Organization

The 2013 HOME Rule describes the roles of owner, developer, and sponsor for CHDOs. To qualify as a CHDO, the rule requires an organization to have paid employees with demonstrated housing experience relevant to the prospective CHDO's role for the project for which it seeks CHDO set-aside funds. Therefore, when assessing capacity, a PJ must consider the role an organization will undertake for the project.

- An "owner" must demonstrate the capacity to own and manage the housing, as well as oversee any development that is to occur.
- A "developer" must demonstrate the capacity to own, manage, and develop the housing.
- A "sponsor" must demonstrate the capacity to develop the housing and, if it is not transferring ownership of the housing to another organization at completion of the development, must also have the capacity to own and manage the housing. If the sponsor is acquiring standard rental housing it must have the capacity to own and manage the housing.

If the organization's paid employees do not have demonstrated housing experience, the capacity requirement may be met through a consultant with relevant housing experience, but only during the organization's first year of funding as a CHDO. The consultant must train the paid staff so that the CHDO will have in-house capacity at the end of the first year.

The capacity requirement cannot be met through board members, volunteers, or staff that is donated by another organization. Consultants or volunteers may fill occasional skill gaps or undertake activities that are required only on a periodic basis (e.g., project underwriting) but their experience cannot serve as the basis of a determination that an organization has paid staff with the required capacity.

Who Is A Paid Employee?

A person whose salary, payroll taxes, and unemployment insurance are paid by the organization and from whom the organization withholds payroll and income taxes is a paid employee. Receipt of a W-2 from the organization is sufficient evidence that an individual is a "paid employee." Paid staff may be full- or part-time depending on the needs of the project but must be directly paid by and accountable to the organization seeking CHDO project funding.

What if the Employee Does Not Receive a W-2?

When considering if a person who does not receive a W-2 is a paid employee, the PJ should consider whether the organization has the right to direct and control how the person does the job. The employment contract between the organization and the individual worker will likely serve as the key documentation for making this decision.

If the organization gives the worker instructions about when, where, and how to work, the worker is likely an employee. However, an organization does not have to actually direct or control how the worker performs assigned tasks in order for a worker to be an employee. A worker is an employee as long as the employer retains the right to direct and control the work performed by the employee. In some organizations, especially those with highly specialized professionals or workers who require little or no instruction, directing and controlling work is functionally more difficult; but, if the organization retains the right to control the details of the worker's performance, the worker is an employee.

If the organization has an evaluation system to measure performance of the employee or provides training to the worker on how to perform the worker's job in a particular manner, the worker is likely an employee.

Who is not a paid employee?

To be counted as a paid employee, for the purpose of establishing capacity, the employee must be directly paid by the prospective CHDO and, therefore, cannot be donated by, contracted through, or cost-allocated through another organization, such as the entity that created the CHDO.

The regulations place additional restrictions on employees of for-profit organizations that create CHDOs and on employees of governmental entities. An organization cannot be designated as a CHDO if any of its employees are also employees of the for-profit organization that created the prospective CHDO. Similarly, an organization cannot be designated as a CHDO if any of its employees are also officials or employees of any governmental entity (any of the following: participating jurisdiction, other jurisdiction, Indian tribe, public housing agency, Indian housing authority, housing finance agency, or redevelopment authority).