

## TITLE 25 HOUSING AND COMMUNITY DEVELOPMENT

### CHAPTER 7. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

#### SUBCHAPTER 1. PREDEVELOPMENT LOAN FUNDS

**7000. General.** These regulations set forth the policies and procedures governing the management and use of the Predevelopment Loan Fund governed by Sections 50530-50532.5 of the Health and Safety Code.

Note: Authority cited: Sections 50402, 50406(n), Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532 of the Health and Safety Code.

#### **7002. Definitions**

“Applicant” means an entity that has applied for a loan from the Fund.

"Assisted Housing" means housing for which financial assistance is provided through one or more programs designed to reduce housing costs for persons and families of low and moderate income. This assistance may include, but is not limited to, below-market interest loans, grants, rent supplements, development costs subsidies, interest subsidies, below-marked priced land, grants of land, or density bonuses. Such housing may include Manufactured Housing and Mobilehome Parks, but does not include emergency shelters for the homeless.

“At-risk Housing” means existing government-assisted rental housing at risk of conversion to market-rate rents, due to factors that may include, but are not limited to, costs of necessary rehabilitation, or a modification or termination of subsidies.

"Borrower" means an “Eligible Sponsor” that has received approval for a Predevelopment Loan from the Fund.

"Construction Financing" means a short-term loan made for financing the construction or rehabilitation of a housing development.

"Cooperative Housing Corporation" is defined in Section 50091 of the Health and Safety Code.

"Department" means the California Department of Housing and Community Development.

“Director” means the Director of the Department, or his or her designee.

"Eligible Sponsors" is defined in Health and Safety Code Section 50530.

"Emergency Loan Amendment" means a loan amendment for an increase in the loan amount, or a change in terms and conditions, which cannot await the next regularly scheduled Loan Committee meeting because of circumstances or conditions beyond the Borrower's control, as determined by the Department.

"Fund" means the Predevelopment Loan Fund.

"Limited Liability Corporation" includes a "Limited Liability Company" as defined in Section 17000 et seq. of the Corporations Code.

"Loan Agreement" means a signed contract between the borrower and the department for a predevelopment loan with all the terms and conditions as determined by the Department,

"Loan Committee" means a committee established pursuant to Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of this Part.

"Local Governmental Agency" means any county, city, city and county, the duly constituted governing body of an Indian reservation or rancheria, redevelopment agency or public housing authority, and also includes any state agency, public district or other political subdivisions of the state, and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons and families of low-income. It also includes two or more local public entities acting jointly.

"Low-Income Person" shall have the same meaning as "Lower Income Households" as defined in Section 6928 of this Part.

"Manufactured Housing" means a manufactured home, as defined in Section 18007 of the Health and Safety Code, and includes a mobilehome, as defined by Section 18008 of the Health and Safety Code, or factory-built housing as defined in Section 19971 of the Health and Safety Code.

"Mobilehome Park" is defined by Section 18214 of the Health and Safety Code.

"Nonprofit Corporation" is defined in Section 50091 of the Health and Safety Code.

"Permanent Financing" means a long-term loan which is secured by a deed of trust.

"Persons of Low Income" shall have the same meaning as "Lower Income Households" as defined by Section 6928 of this Part.

"Persons of Very Low Income" shall have the same meaning as "Very Low Income Households" as defined by Section 6926 of this Part.

"Predevelopment Loan" is defined in Health and Safety Code Sections 50530.

"Public Transit Corridor" is defined in Health and Safety Code Section 50093.5.

“Preservation” in this subchapter means the acquisition of At-Risk Housing, its rehabilitation if needed, and its continued operation as Assisted Housing.

"Rural Area" is defined in Section 50199.21 of the Health and Safety Code.

"Urban Area" is defined in Section 50104.7 of the Health and Safety Code.

"Very Low Income Person" shall have the same meaning as "Very Low Income Households" as defined by Section 6926 of this part.

Note: Authority Cited: Sections 50402 and 50406, Health and Safety Code. Reference: Sections 18007, 18008, 18214, 50055, 50091, 50093.5, 50105, 50199.21, and 50530, 50530.5, 50531 and 50532.5, Health and Safety Code.

### **7003. Sponsor Eligibility**

(a) Eligible Sponsors for Predevelopment Loans are:

(1) Local Government Agencies;

(2) Nonprofit Corporations;

(3) Cooperative Housing Corporations; or

(4) Limited Liability Corporations or limited partnerships where all of the general partners are nonprofit mutual or public benefit corporations.

(b) Predevelopment Loans may be made only to Eligible Sponsors who meet the following standards:

(1) Adequate administrative capacity to implement the loans;

(2) Substantial housing development experience or substantial experience in development and administration of other types of public or non-profit programs; and

(3) If the Eligible Sponsor has received any other loans or grants from the Department, a good record of performance under those loan or grant agreements.

Note: Authority cited: Sections 50402 and 50406(n), Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532 Health and Safety Code.

#### **7004. Project Eligibility**

(a) Eligible Sponsors must have site control of the proposed project property by one of the following means, in the name of the Eligible Sponsor or an entity controlled by the Eligible Sponsor:

(1) Fee title.

(2) A leasehold interest on the project property with provisions that enable the Eligible Sponsor to make improvements on and encumber the property, provided that the terms and conditions of any proposed lease shall permit compliance with all Predevelopment Loan requirements.

(3) An enforceable option to purchase or lease which shall extend, or may be extended, for a minimum of 3 months beyond the deadline for application submittal. The Department may accept options of less than 3 months if the Eligible Sponsor provides evidence satisfactory to the Department that it has sufficient committed financing to acquire the property prior to expiration of the option.

(4) A disposition and development agreement with a public agency.

(5) An agreement with a public agency that gives the Eligible Sponsor exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties; or

(6) A land sales contract, or other enforceable agreement for the acquisition of the property.

(b) Housing assisted by the Predevelopment Loan Fund must be Assisted Housing at least 51% of which is designated to be occupied by Persons of Low Income and affordable to such persons in accordance with Section 6910 et seq. of this Division.

(c) No Predevelopment Loan may be made unless the Department may reasonably anticipate that a commitment can be obtained by the Eligible Sponsor for Construction Financing or Permanent Financing that will permit occupancy by Persons of Low Income.

(d) In making Predevelopment Loans, the Department may consider, but need not be limited to, the following factors:

(1) The past achievements of the Applicant or the relevant experience of the Applicant's board or consultant;

(2) The general availability of public financing for the Assisted Housing;

(3) The need for the Assisted Housing;

- (4) The proposed cost of the land and the Assisted Housing;
  - (5) The number of units assisted by the Predevelopment Loan in relation to the loan amount;
  - (6) Whether the Assisted Housing will incorporate innovative or energy efficient design and techniques which promote affordable development costs and/or operating expenses;
  - (7) The number or percentage of units in the Assisted Housing that will be occupied by Very Low Income Persons;
  - (8) Whether the Assisted Housing will be located within one quarter-mile of schools, major employment centers, medical facilities, grocery stores, pharmacies, parks, and/or police and fire stations;
  - (9) If the Applicant is a Local Government Agency, the degree to which the city or county in which the Assisted Housing is located has complied with State Housing Element Law (Government Code Section 65580 et. seq.), in accordance with evaluation criteria established by the Department. Failure of the Applicant to comply with State Housing Element Law may be grounds for disapproving a Predevelopment Loan application.
- (e) To the extent feasible, the Department shall ensure a reasonable geographic distribution of the funds. Other things being equal, the Department shall give priority to assisting developments that meet either of the following requirements:
- (1) The developments will be located in Public Transit Corridors.
  - (2) The developments will be used for the Preservation and acquisition of existing government-assisted rental housing at risk of conversion to market-rate use. Within this category, the Department shall give priority to those applications that include matching financing from local redevelopment agencies or federal programs.
- (f) The Department shall, in each Notice of Funding Availability (NOFA) issued for the program, set a minimum funding target for Rural Areas based on the lesser of:
- (1) Historical level of awards made under the Rural Predevelopment Loan Program (PDLP-R), or
  - (2) Twenty percent (20%) of available funds at the time of NOFA issuance.

Note: Authority cited: Sections 50402 and 50406(n), Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532 Health and Safety Code.

## 7005. Uses of Funds

(a) Predevelopment Loans may be made for required expenses which are incurred in the process of, and prior to, securing Construction or Permanent Financing for production, conversion, Preservation or rehabilitation of Assisted Housing, including Mobilehome Parks, which are recoverable from Construction or Permanent Financing once it is obtained. Loans may be made for purposes that include, but are not limited to:

(1) Costs associated with the purchase of land, including existing structures such as mobilehome parks; options to buy land or existing structures; and extensions of the time periods of options to buy land or existing structures.

(2) Fees for professional services, including but not limited to:

(A) Consultant fees;

(B) Architectural fees for reasonable architectural costs in connection with the preparation of an application for Construction or Permanent Financing;

(C) Engineering fees connected with the preparation of an application for Construction or Permanent Financing;

(D) Legal fees incurred in connection with the preparation of an application for Construction or Permanent Financing, obtaining local government approvals, site purchase, a loan closing, or for representation in litigation affecting a Predevelopment Loan Program-assisted project.

(3) Permit or application fees;

(4) Bonding fees;

(5) Costs of site preparation, related water or sewer development, or on-site material expenses;

(6) Repayment of a predevelopment loan obtained from another source and utilized by the Applicant in connection with the proposed housing development;

(7) Escrow deposits; and

(8) Other expenses recoverable from the Construction or Permanent Financing.

(b) Land purchased partially with Predevelopment Loan funds may be used for purposes other than Assisted Housing, for example, the development of non-Assisted Housing or commercial or agricultural uses. In such cases, the amount of the Predevelopment Loan may not exceed the cost for authorized purposes attributable to that portion of the land which will be used for Assisted Housing for Persons of Low Income.

(c) The Department may make Predevelopment Loans for land purchase to Eligible Sponsors even if the Eligible Sponsor is not able at the time the Predevelopment Loan is made to proceed with the development of Assisted Housing on the purchased site.

(d) The Department may make Predevelopment Loans for the development of Mobilehome Parks and Manufactured Housing subdivisions.

(e) Predevelopment Loans may not be made for Construction Financing or for the administrative expenses of the Applicant.

(f) The following limitations on eligible expenses shall apply:

(1) No more than 20% of the total monies appropriated to the Fund, or a lower limit which the Department may set in a Notice of Funding Availability (NOFA), shall be committed to any single Borrower at any time. If the Applicant is a Limited Liability Corporation or limited partnership, all Predevelopment Loan commitments to the general partner or general partners shall be counted when determining whether this limit has been reached.

(2) The aggregate amount loaned for purposes other than for an option to purchase land or existing structures, the purchase of real property or existing structures, or physical site development shall not exceed \$100,000.

(3) The amount loaned for the purchase or refinance of real property shall not exceed its fair market value. Fair market value shall be determined by an appraisal based on comparable sales or by any other appraisal method or evidence of value approved by the Department. The Borrower shall pay the cost of an appraisal, but the cost may be financed through a Predevelopment Loan.

(4) Predevelopment Loans or special account disbursements for purchase option payments, purchase option extensions or escrow deposits shall not exceed 10% of the purchase price.

(5) Except for loans for option payments or escrow deposits of \$1,000 or less, the option or escrow agreement shall provide for the return of the option payment or escrow deposit if:

(A) The seller is unable to deliver clear title to the land or is unable to convey the land for any other reason, or

(B) The purchase price exceeds fair market value.

(6) If the Predevelopment Loan for an option payment or escrow deposit exceeds \$15,000, the option or escrow agreement shall provide for the return of the payment or deposit if a Construction or Permanent Financing commitment cannot be obtained.

(7) Options and escrow agreements shall be assigned to the Department as security.

(8) Predevelopment Loans may be made for land purchase only if the Department finds that development of the site for affordable housing is feasible.

(9) Predevelopment Loans for engineering fees shall not exceed 50% of a housing development's total engineering costs or \$10,000, whichever is greater. The Department may increase this limit if the housing development includes the construction of water and sewer lines or facilities. Disbursement of engineering fees shall be staged in accordance with the completion of engineering work.

(10) Disbursement of architectural fees shall be staged in accordance with the completion of architectural work.

(11) Predevelopment Loans for legal fees shall not exceed \$5,000. Loan funds shall not be disbursed unless the legal fees are itemized. Predevelopment Loans shall not be made for legal fees incurred in the formation of Eligible Sponsors.

(12) Predevelopment Loans for consultant fees shall not exceed 1% of the housing project's development costs, and shall only be made if the tasks of the consultant are enumerated in an agreement between the Applicant and the consultant which is approved by the Department. Payments to a consultant shall be staged in accordance with the completion of various tasks.

(13) Predevelopment Loans for bonding, permits, deposits and application fees may be made to the extent that there is a need to pay for such fees prior to obtaining Construction or Permanent Financing.

(14) Predevelopment Loans for site preparation, on-site material expenses and related water or sewer development may be made only if the Applicant has made a reasonable effort to obtain funds for these purposes from alternative sources.

(15) Limitations on other loan purposes pursuant to subdivision (a)(8) of this section may be established by the Director upon recommendation of the Loan Committee on a case-by-case basis. The Director, upon recommendation of the Loan Committee, may waive any requirement of this section not otherwise required by law if it is determined that the waiver would not adversely affect the purposes of the Fund or that the requirement would impose an intolerable burden on the Borrower.

Note: Authority cited: Sections 50402 and 50406, Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532 Health and Safety Code.

#### **7006. Rates and Terms.**

(a) Interest. The interest rate for Predevelopment Loans is 3%. Interest will be charged only on funds actually advanced to, or on behalf of, the Borrower.

(b) Reduced Interest. The interest rate for loans may be reduced or eliminated prior to repayment of the loan if the Loan Committee makes a finding that charging it would prevent



a significant number of Persons of Very Low Income from owning or occupying new or rehabilitated Assisted Housing and the Director concurs in this finding.

(1) To obtain a reduction or elimination of the current interest rate, the Borrower shall expressly so request and submit written evidence which demonstrates the necessity of the reduction or elimination of the interest rate.

(2) On the basis of the written evidence submitted, the Department shall determine the appropriate interest rate, if any, to be charged on the loan.

(3) For all loans for which no interest is to be charged, an amount not to exceed 2% of the loan amount shall be charged as a loan origination fee, which may be:

(A) Paid in cash by the Borrower at the time of loan closing; or

(B) Added to the approved loan amount and be payable at the time of loan repayment.

(c) Term. Predevelopment Loans may be made for a term of up to two years. Existing loans may be extended at the discretion of the Director upon recommendation of the Loan Committee.

Note: Authority cited: Sections 50402 and 50406, Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532 Health and Safety Code.

#### **7008. Special Conditions.**

(a) Loan Documents. Before the Department disburses funds to any Borrower, the Borrower will be required to submit to the Department the following executed documents which will have been prepared by the Department or at its direction:

(1) A borrowing resolution

(2) A-Loan Agreement.

(3) A promissory note.

(4) Security instrument(s).

(5) Any other documents necessary to complete the transaction which are required by the Department. Additional documents may include, but not be limited to, a policy of title insurance, preliminary title report, appraisal, and environmental reports.

(b) Loan Disbursements. Loan funds will be disbursed to, or on the behalf of, the borrower as the need for funds arises. Borrowers must request disbursements in writing from the Department. Disbursement requests must be supported by evidence of an obligation that is due or is about to become due.

(c) Non Discrimination and Affirmative Action. Borrowers must agree to adopt and implement all current contract requirements of HCD and the Department of General Services for the Loan Agreement, which may cover all aspects of the construction, marketing, and management of the housing developed with the assistance of the Fund.

(d) Local, State or Federal Requirements. Borrowers will be required to abide by such local, state or federal regulations as are applicable to the proposed housing developments. These may include but are not limited to: zoning ordinances; building codes; planning; historic preservation; environmental and relocation regulations; and Article XXXIV of the California Constitution.

(e) Relocation. If the housing development financed with loan funds will result in the temporary or permanent displacement of one or more persons from their residences, the Borrower shall submit a relocation plan to the Department prior to disbursement of loan funds. Such plan shall adequately respond to the needs of displacees, as determined by the Department.

(f) Security. Each loan will be secured in a manner that adequately protects the interests of the Department. The Loan Committee shall recommend to the Director the form and amount of security that will be required for each loan. Security may include but is not limited to:

- (1) Deeds of trust or other liens on real property;
- (2) Assignments of options or escrow agreements;
- (3) Liens on personal property; or
- (4) A deed of trust or other lien on a leasehold interest in Indian trust land.

(g) Reports. Borrowers are required to provide the Department with reports on the progress of housing developments and the purposes for which the loan funds have been used. Reports must be submitted monthly.

Note: Authority Cited: Sections 50402 and 50406, Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532, Health and Safety Code; and Section 7261.6, Government Code.

## **7012. Processing Applications.**

(a) Requests for loans must be made on an application form approved by the Department on its Predevelopment Loan Fund Application Form. Applications may be obtained from the Program Manager of the Predevelopment Loan Funds at 921 Tenth Street, Sacramento, CA 95814..

(b) Applications for loan funds will be reviewed by the Predevelopment Loan staff of the Department.

(c) Completed applications-will be submitted for approval or disapproval to the Loan Committee. Loan Committee determinations will be submitted to the Director who shall make the final determination. Emergency Loan Amendment requests will be submitted to the Director who will approve or disapprove such requests.

(d) To the extent feasible, eligible applications received not less than 20 working days prior to a Loan Committee meeting will be presented at that meeting for consideration of recommendations for funding. If staff workload, or lack of available Predevelopment Loan funding, does not allow presentation at the earliest date, the application will be presented at a subsequent meeting. The meetings are usually held each month.

(e) Applicants will be notified in writing of the Department's action, including any conditions which the Director has placed on the loan. If the loan is rejected, the written notice will include the reasons for the rejection.

(f) Reconsideration Procedure.

(1) Applicants whose loan applications have not been approved by the Director may submit a request for reconsideration by writing to the Director.

(2) The Director will review all requests for reconsideration and inform the Applicant in writing of the decision.

(3) The decisions of the Director shall be final.

(g) Loans that are otherwise eligible for funding but are not approved because of the unavailability of loan funds shall be considered at the next Loan Committee meeting and shall be judged with other loans considered at that meeting. The Loan Committee may establish limitations as to the total amount, in dollars, of loans it may approve at any meeting.

Note: Authority cited: Sections 50402 and 50406, Health and Safety Code. Reference: Sections 50530 and 50532, Health and Safety Code.

#### **7016. Loan Termination.**

(a) Loan commitments or Loan Agreements may be terminated, or the loan amounts reduced, by the Department if the Director determines that:

(1) One of more conditions to commitment, agreement, or disbursement have not been or will not be met;

(2) Development of the Assisted Housing is not progressing or is anticipated not to progress within a reasonable time as determined by the Department;

(3) The objectives of the loan cannot be met; and/or

(4) The Department's security is jeopardized.

(b) If the Department determines that a purchased site cannot be developed by a Borrower within a reasonable period of time as determined by the Department, the Borrower shall convey the site to the Department, which shall transfer the site to be sold pursuant to Health and Safety Code Section-50406(o) and 50532(c). In determining a reasonable period of time, the Department shall consider factors in 7004, Borrower cooperation with the Department's requirements, and continuing progress toward developing the site and obtaining Construction and Permanent Financing.

Note: Authority cited: Sections 50402 and 50406, Health and Safety Code. Reference: Sections 50530, 50530.5, 50531 and 50532, Health and Safety Code.0