FINDING OF EMERGENCY

AND INFORMATIVE DIGEST

FOR

PROPOSED REGULATIONS

OF THE

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

CALIFORNIA CODE OF REGULATIONS, TITLE 25, DIV. 1, CHAPTER 7

NEW SUBCHAPTER 12.6, COMMENCING WITH SECTION 7980

FOR THE

FEDERAL HOMELESSNESS PREVENTION AND RAPID RE-HOUSING PROGRAM

FINDING OF EMERGENCY:

A. The Legislature has found and declared that the subject of housing is of vital statewide importance to the health, safety, and welfare of the residents of this state. Health and Safety Code Sec. 50001.

B. The Congress of the United States has established, as a national goal, the provision of a decent home and a suitable living environment for every American family and the Legislature has found that the attainment of this goal is a priority of the highest order. Health and Safety Code Sec. 50002.

C. The Legislature has found and declared that there exists within the state a serious shortage of decent, safe, and sanitary housing which is affordable to many persons in the state. Health and Safety Code Sec. 52001.

D. The Legislature has further found that: (1) homelessness is a statewide problem that affects many cities and counties; (2) there are an estimated 360,000 homeless individuals and families in California; (3) in some counties like Los Angeles, an estimated 240,000 men, women, and children experience homelessness over the course of each year; and (4) homelessness affects people of all races, gender, age and geographic location. Stats. of 2007, Ch. 633, Sec. 1 (SB 2).

E. In Los Angeles County there are over 80,000 men, women, and children who are homeless on any given night. Los Angeles County Housing and Community Development Consolidated Plan 2003-2008, p. 5-2.

F. It is the intent of the Legislature to encourage the provision of shelter, with effective personal rehabilitation and self-sufficiency development services, to homeless persons at as low a cost and as quickly as possible, without compromising the health and safety of shelter occupants. Health and Safety Code Sec. 50800(a).

G. In a letter to the President of the United States dated March 19, 2009, Governor Schwarzenegger made the following statements:

- "With a 10 percent unemployment rate and one of the highest foreclosure rates in the nation, California finds itself at the epicenter of our nation's economic crisis."
- "The good news in that regard is that the American Recovery and Reinvestment Act (ARRA) of 2009 will provide much-needed assistance to this population."
- "The Homelessness Prevention Fund, provided through the U.S. Department of Housing and Urban Development (HUD), will help keep individuals and families from becoming homeless and help those who are homeless to quickly find stable housing."
- "It is vital that HUD get the ARRA funds out <u>as quickly as possible</u> to assist the families and individuals who need these services (emphasis added)." Letter from Governor Arnold Schwarzenegger to the President of the United States dated March 19, 2009.

H. The current economic recession has resulted in an increase in the number of homeless families, and an increase in the number of families at risk of homelessness.

I. On March 19, 2009, the federal Department of Housing and Urban Development (HUD) issued a "Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009," (Docket No. FR-5307-N-01) (the "HUD Notice"). These federal funds are being provided as grants to provide <u>immediate assistance</u> to the homeless for such uses as: rental assistance; hotel/motel vouchers; utility deposits and payments; and moving costs.

J. Pursuant to the HUD Notice, application for Homelessness Prevention and Rapid Re-Housing Program ("HPRP") grants was to be made through a substantial amendment to an applicant's existing Consolidated Plan detailing how HPRP funds would be distributed and used. <u>The Notice also requires that all HPRP funds be obligated no later than September 30, 2009.</u> (See HUD Notice, p. 2, section E. "Dates.")

K. The HUD Notice allocated $44,466,877 to the State of California which will be administered by the Department of Housing and Community Development (HCD).

L. HCD's substantial amendment to the State's Consolidated Plan was approved by HUD on <u>July 10, 2009</u>.

L. Pursuant to the HUD Notice, by September 30, 2009, HCD must: solicit applications for HPRP funds; review, rate and rank applications; prepare and enter into contractual commitments of funds. This selection process must follow the HUD-approved

substantial amendment. Funds that are not obligated by September 30th must be returned to HUD.

Given the urgency of the homeless situation in California and the potential loss of federal funds to address this urgent situation, HCD proposes the adoption of these regulations through the emergency adoption process. **HCD finds that:**

1. *The foregoing facts and circumstances demonstrate the existence of an emergency situation with respect to homelessness in California.*

2. *The federal government has made funds available to the State of California to address this emergency, but the funds must be obligated no later than September 30, 2009.*

3. *In order to make HPRP funds available and make funding decisions, HCD will need to create and apply rules of general application that may not be valid unless adopted as regulations.*

4. *HCD could not move forward with formal regulations until it received HUD approval of its substantial amendment, which was not received until July 10, 2009. If HCD were now to engage in the routine APA regulation adoption process involving a 45-day public notice period and a 30-day Office of Administrative Law review, HCD would not be able to meet the HUD-imposed September 30, 2009, deadline for the obligation of HPRP funds. Consequently over $44 million in federal funds to address homelessness in California would be lost.*

AUTHORITY AND REFERENCE

HCD proposes to adopt these regulations pursuant to the authority granted by Health and Safety Code Section 50406 subdivisions (h), (i) and (n), and Health and Safety Code Section 50407. The purpose of these regulations is to administer the federal funds made available to the State of California under the HUD "Notice of Allocations, Application Procedures, and requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009" published on March 19, 2009, as Docket No. FR 5307-N-01; and "Corrections and Clarifications" published on June 8, 2009, as Docket No. FR 5307-N-02 (collectively the "HUD Notice"). The HUD Notice allocated $44,466,877 in HPRP funds to the State of California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of these regulations is to establish a process for administering the HUD allocation of $44 million in HPRP funds to the State of California.

Background: HCD is authorized to enter into agreements to administer housing programs and perform any acts necessary to obtain subsidies for use in connection with

the exercise of powers and functions of the department.[1] HCD also has been designated as the principal state department responsible for coordinating federal-state relationships in housing and community development.[2] HCD is also required to encourage full utilization of federal programs and to promote maximum utilization of federal subsidies to meet housing needs.[3] Finally, HCD is authorized to do any and all things necessary to carry out its purposes and exercise the powers expressly granted to it.[4]

Pursuant to the above authorities, HCD administers three federally-funded programs for communities in the state that do not receive a direct allocation of funds from HUD: the Federal Emergency Shelter Grant (FESG) Program[5]; the Community Development Block Grant (CDBG) Program[6]; and the Home Investment Partnership (HOME) Program.[7] A condition of receiving funds from HUD is that HCD must have a "consolidated plan" that describes how it will coordinate use of the HUD funds it receives.

As part of the American Recovery and Reinvestment Act (ARRA) of 2009, funds were made available to HUD to address homelessness. On March 19, 2009 HUD issued the HUD Notice making $44,446,877 in HPRP funds available for the State of California program. These funds were made available on a formula basis and the Notice required that application for funding be made by submitting a substantial amendment to the State's consolidated plan for expenditure of HUD funds, prepared by HCD. HCD did not receive official HUD approval of its substantial amendment until July 10, 2009.

Because these are ARRA funds appropriated with the intent of stimulating the U.S. economy as soon as possible, HUD imposed very short time frames for submitting a substantial amendment and committing the funds. The HUD Notice requires that HPRP funds be obligated no later than September 30, 2009, or they revert to HUD. In order to meet this deadline, HCD has had to develop its procedures and solicit applications in advance of the adoption of regulations. However, it is HCD's intent that funding decisions not be made until these regulations become effective.

The HUD Notice has been incorporated into these regulations by reference.

In order to expedite the entire process, these proposed regulations pass along the HUD Notice requirements with only several HCD policy decisions:

- Funds will be made available on a competitive Notice of Funding Availability (NOFA) process, rather than formula basis to better ensure that the "best"

[1] See Health & Saf. Code Section 50406 subdivisions (h) and (i).
[2] See Health & Saf. Code Section 50407.
[3] See ibid.
[4] SeeHealth & Safety Code Section 50406 subdivision (n).
[5] See Calif. Code of Regs., tit. 25, commencing with Sec. 8400.
[6] See Health and Saf. Code Sec. 50825 et seq.
[7] See Health and Saf. Code Sec. 50896 et seq.

applications are funded, with funds being directed to areas of greatest need. This is the process used in the FESG program.

- Eligible activities are all those that are eligible under the HUD Notice.

- The NOFA establishes minimum and maximum award amounts to assist in spreading the funds but also reducing the number of contracts HCD must manage.

- Rating criteria are based on areas of emphasis in the HUD Notice: Applicant capability; depth of services proposed to meet needs; outreach and marketing; fiscal management abilities and ability to deal with the ARRA transparency and reporting requirements; and bonus points for multi-agency applications. In addition HCD has established minimum required points in each of these categories to better ensure successful programs.

- A major difference from FESG is that applications will be accepted from all FESG-eligible entities and localities that also will receive a direct allocation of HPRP funds from HUD ("entitlement jurisdictions"). Because of the magnitude of the homeless need in urbanized areas, and the direction from HUD to fund the areas of greatest need, it was determined that allocating 100% of the state HPRP funds to smaller and more rural areas ("nonentitlement jurisdictions") was not the best public policy. Therefore, these regulations permit entitlement jurisdictions to compete for funds with nonentitlement jurisdictions. However, so that entitlement jurisdictions do not absorb all of the state's HPRP funds, applications from nonentitlement jurisdictions will be given bonus points.

- In addition, subject to HUD approval, HCD also proposes to accept applications from public housing authorities ("PHA's") and public school districts. PHA's are part of the housing delivery system within communities statewide. Likewise public school districts play a role in providing a point of contact with the special needs population. They bring case management expertise that can contribute to creative solutions. Therefore, participation by PHA's and public school districts will add critical elements to the delivery of service and contacts needed to make programs successful.

Summary of Individual Regulation Sections

Section 7980. Purpose and Scope - This section provides a statement of the program regulations' authority, purpose and general activities; and notifies applicants that all HPRP funds are subject to the provisions of the HUD Notice.

Section 7980.1. Definitions - This section provides the definitions of key terms used throughout the body of regulations. These definitions are descriptive, are adopted in order to shorten the text of the regulations, and for ease of reference.

Section 7982. Eligible Application Types – The purpose of this section is to notify the public of the various combinations of eligible applicant entities. Under the state's HPRP program, applicants may apply individually, or as part of a "multi-agency" application.

Section 7982.1. Eligible Programs - The purpose of this section is to inform the public of what programs are eligible under the HUD Notice.

Section 7982.2. Minimum and Maximum Application Amounts - The purpose of this section is to establish minimum and maximum application amounts. Minimum application amounts are necessary to ensure that sufficient funds are provided for a local program to make an impact. Maximum application amounts are necessary to ensure that limited funds are better distributed throughout the state.

Section 7982.3. Coordination with Local Continuums(s) of Care and Data Collection - The HUD notice requires the state to ensure that HPRP funds are coordinated with organizations receiving continuum of care funding. This section implements that requirement. The HUD Notice also requires that client-level data be gathered and reported by the Department using the federal Homeless Management Information System (HMIS) or a comparable data base. This section implements that requirement by requiring subgrantees to participate in HMIS.

Section 7982.4. Eligible Activities – This section is included to make the regulations more user-friendly by summarizing the eligible activities under the HUD Notice.

Section 7983. Notice of Funding Availability - The purpose of this section is to inform the public that HPRP funds will be made available through a competitive notice of funding availability (NOFA) and to generally describe the topics that will be covered in the NOFA.

Section 7983.1. Application Form and Content – The purpose of this section is to spell out in detail the information that must be provided by applicants for HPRP funds. This information will establish the eligibility of the applicant and proposed uses of funds, and will collect the information necessary to rate and rank the application.

Section 7983.2. Initial Application Review – This section is necessary to inform the public of the process the department will utilize for reviewing applications. The section establishes an initial threshold review before applications are further reviewed for purposes of scoring.

Section 7983.3. Rating Criteria - The purpose of this section is to inform applicants of the criteria the Department will utilize for scoring applications, and the relative point scores for the various criteria. This section establishes minimum scores on most of the criteria that must be achieved in order for an application to be eligible for funding. The general rating criteria are: applicant capability; services; outreach and marketing; and fiscal management. This section also describes the subcriteria that will be utilized for developing scores for each criterion. Finally, the section also established up to a 50-

point bonus for multi-agency applications and up to a 75-point bonus for conducting programs in nonentitlement areas.

Section 7983.4. Funding Awards – The purpose of this section is to clearly establish that awards will be made based on the scores awarded by applying the rating criteria.

Section 7983.5 Application Budget Adjustments – The purpose of this section is to notify applicants that the budgets submitted in their applications may be adjusted by the Department based on deletion of ineligible costs.

Section 7984. Subgrantee Contract Requirements – The purpose of this section is to provide notice that each successful applicant for HPRP funds will be required to enter into a state standard agreement. The section further details the content of these agreements. A principal purpose of these agreements is to contractually obligate subgrantees to abide by the requirements of the HUD Notice.

7984.1. Drawdown of Funds and Financial Management - The purpose of this section is to establish the process for requesting HPRP funds from the Department.

Section 7984.2. Record Keeping and Reporting Requirements - The HUD Notice and ARRA contain various record keeping and reporting requirements that must be followed by the Department as the HPRP grantee, and by successful applicants termed "subgrantees." The purpose of this section is to notify applicants of the record keeping and reporting obligations that come with the acceptance of HPRP funds.

IMPACT OF PROPOSED REGULATIONS

LOCAL MANDATE

Federal Law mandates most of the requirements in these proposed regulations. Moreover, the Department has determined that these regulations do not impose a mandate on local agencies or school districts since school districts are not eligible applicants, and participation in the program is voluntary.

FISCAL IMPACT

The Department has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in Federal funding to the State will result from the proposed action. Participation in the program is voluntary and school districts are not eligible applicants. The State's share of HPRP funds is determined by HUD by a formula. The HUD Notice permits the state to recoup its costs for administering the program.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action has no significant impact on housing costs on a state-wide basis. HPRP funds may be used for housing vouchers and in that way will reduce the housing costs of individual families.