

Title 25. Department of Housing and Community Development

Local Housing Trust Fund Program Regulations

Adopt Subchapter 2.5. as follows:

Subchapter 2.5. Local Housing Trust Fund Program

Adopt § 7150. Purpose and Scope.

- (a) These regulations implement and interpret Health and Safety Code Section 50843.5 and subdivision (c) of Health and Safety Code Section 53545.9.
- (b) This program shall be known as the Local Housing Trust Fund Program.
Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50842.2, 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7151. Definitions.

The following definitions govern the use of the terms below in this subchapter:

- (a) “Affordable Rent” means the same as defined in Health and Safety Code Section 50053.
- (b) “CCR” means the California Code of Regulations.
- (c) “Department” means the Department of Housing and Community Development.
- (d) “Dedicated Source” means taxes, fees, loan repayments, private contribution or other source of funds that will reasonably provide Ongoing Revenues to the Local Housing Trust Fund sufficient to meet the requirements of the Program.
- (e) “Eligible Project” means any of the following: (1) Rental housing projects or units within rental housing projects. The affordability of all units assisted by Program Funds shall be restricted for not less than 55 years. (2) Emergency shelters, safe havens, and transitional housing, as these terms are defined in Health and Safety Code section 50801. (3) Homeownership Project as defined in section 7151(j).
- (f) “Existing Local Housing Trust Fund” is a Local Housing Trust Fund organized, funded and operated prior to September 30, 2006.
- (g) “Extremely Low Income” has the meaning set forth in Health & Safety Code section 50106. Grantees shall utilize income limits issued by the Department for Extremely Low Income households for each county by household size.
- (h) “First-time Homebuyer” means an individual or individuals or an individual and his or her spouse who are in the process of buying a dwelling with the intent to occupy the home as a principal place of residence and who have not owned a home during the three-year period before the purchase of a home with Program Funds, except that the following individual or individuals may not be excluded from consideration as a first-time homebuyer under this definition:
 - (1) a displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced

homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;

(2) a single parent who, while married, owned a home with his or her spouse or resided in a home owned by a spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or

(3) an individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with Program Funds, a dwelling unit whose structure is:

(A) not permanently affixed to a permanent foundation in accordance with local or state regulations; or

(B) not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

- (i) "Grantee" means an entity that has received an award of Program Funds.
- (j) "Homeownership Project" means a project in which Program Funds will be used to assist in the acquisition, construction or rehabilitation of owner-occupied housing units in which the homeowner has an ownership interest sufficient to ~~secure the deed restriction required by~~ comply with subdivision (d)(3) of Health & Safety Code section 50843.5.
- (k) "Local Housing Trust Fund" is a public, joint public and private fund or charitable nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code, which was established by legislation, ordinance, resolution (including nonprofit articles of incorporation) or a public-private partnership organized to receive specific revenue to address local housing needs. The key characteristic of a Local Housing Trust Fund is that it receives Ongoing Revenues from Dedicated Sources of funding sufficient to permit the fund to participate in the Program.
- (l) "Local Impact Fees" are impact fees, mitigation fees, or capital facility fees imposed on residential development by municipalities, county agencies, or other jurisdictions such as utility districts, school districts, water agencies and resource conservation districts. Local Impact Fees may include fees for residential or commercial development (in lieu of building affordable housing), parks and recreation, schools, traffic, street and signals, law enforcement facilities, fire facilities, library facilities, water facilities, waste water treatment, waste water collection, drainage facilities, community development, general facilities, public facilities, governmental, environmental, and facilities assessments.
- (m) "Lower Income Households" has the meaning set forth in Health and Safety Code section 50079.5. Grantees shall utilize limits issued by the Department for Lower Income Households. For each county by household size.
- (n) "Matching Funds" shall mean available funds meeting the requirements of section 7154.
- (o) "Moderate Income Persons and Families" has the meaning set forth in Health & Safety Code section 50093, subdivision (b).
- (p) "New Local Housing Trust Fund" is a Local Housing Trust Fund that was created, funded and operated on or after September 30, 2006.

- (q) “NOFA” means a Notice of Funding Availability issued by the Department to announce the availability of Program Funds, the terms and conditions of awards and requirements for the submittal of applications.
- (r) “On Deposit” means cash or equivalent under the control of the applicant or Grantee at the time of application readily available for use by the Grantee as Matching Funds. Funds On Deposit must be verifiable at the time of application to the satisfaction of the Department.
- (s) “Ongoing Revenues” means a public source of revenue that is dedicated for an indefinite period (beyond annual appropriations); or other revenue that is either: (i) dedicated for a minimum five-year period and the source of that revenue has an income history which can reasonably support the level of proposed funding-; or (ii) in the case of an existing local housing trust fund, the fund has at least a five-year income history from all nonpublic sources which could reasonably support the level of proposed funding.
- (t) “Program” or “LHTF Program” means the Local Housing Trust Fund Program authorized by Health and Safety Code section 50843.5 as implemented in this subchapter.
- (u) “Program Funds” means the funds provided by the Department to a Local Housing Trust Fund pursuant to this subchapter. Each award of Program Funds to a Local Housing Trust Fund shall equal at least one million dollars and shall not exceed two million dollars.
- (v) “Very Low Income” has the meaning set forth in Health and Safety Code section 50105. Grantees shall utilize income limits issued by the Department for Very Low Income households for each county by household size.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7152. Eligible Applicants.

The following entities shall be eligible to apply for Program funds:

- (a) A city, county, or city and county that has created, funded, and operated an Existing Local Housing Trust Fund, or that has created and funded a New Local Housing Trust Fund.
 - (1) The trust fund shall have the following characteristics:
 - (A) It shall ~~consist of~~ utilize a public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership to receive specific revenue to address local housing needs.
 - (B) It shall be funded from Ongoing Revenues from Dedicated Sources of funding such as taxes, fees, loan repayments, or private contributions.
 - (2) The city, county, or city and county shall have, at the time of application an adopted housing element that the Department has determined, pursuant to Section 65585 of the Government Code, is in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.
 - (3) A Local Housing Trust Fund that was created, funded, and operated by a combination of one or more cities or counties, shall in its application, agree to utilize Program Funds only for Eligible Projects located in cities or

counties that have, at the time of application, an adopted housing element meeting the requirements of subparagraph (2) above.

(b) A charitable nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code that has created, funded, and operated an Existing Local Housing Trust Fund, or has created and funded a New Local Housing Trust Fund.

(1) The trust fund shall have the following characteristics:

(A) It shall consist of a public or joint public and private fund established by legislation, ordinance, resolution, or a public-private partnership to receive specific revenue to address local housing needs.

(B) It shall be funded from Ongoing Revenues from Dedicated Sources of funding such as taxes, fees, loan repayments, or private contributions.

(2) The charitable nonprofit organization shall, in its application, agree to utilize Program Funds only for Eligible Projects located in cities, counties, or a city and county that have, at the time of application, an adopted housing element that the Department has determined, pursuant to Section 65585 of the Government Code, to be in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7153. Eligible Use of Funds.

(a) Funds shall be used by the Grantee to provide loans for payment of predevelopment expenses, acquisition, construction, or rehabilitation of Eligible Projects.

(b) At least 30 percent of the total amount of the Program Funds and the Matching Funds shall be expended on Eligible Projects that are affordable to, and restricted for, Extremely Low Income households. No more than 20 percent of the total amount of the Program Funds and the Matching Funds shall be expended on Eligible Projects affordable to, and restricted for, Moderate Income Persons and Families. The remaining Program Funds and Matching Funds shall be used for Eligible Projects that are affordable to and restricted for, Lower Income Households.

(c) No Program Funds shall be used for the costs of administering the Local Housing Trust Fund.

Note: Authority Cited: Section 50406(o), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7154. Matching Fund Requirements.

(a) For each Program grant applicants shall provide Matching Funds equal to or in excess of the amount of the Program grant.

(b) Matching Funds shall be On Deposit at the time of application, and the source of the funds shall be identified.

(c) Funds restricted for housing use by state or federal law (such as funds from the Home Investment Partnerships Program (HOME), the Community Development Block Grant Program (CDBG), or redevelopment agency low- and moderate-income housing fund set-aside (“LMIHF”) funds) shall not be considered Matching Funds. However, redevelopment agency non-LMIHF funds may be considered Matching Funds.

(d) A Local Housing Trust Fund that is exclusively funded by any combination of HOME, CDBG, and redevelopment agency LMIHF funds, or other state or federal funds restricted for housing use shall not be eligible to receive Program Funds.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7155. Application Requirements.

Application for Program funds shall be made in a format provided by the Department. The Department shall request, as a minimum, the following information:

(a) Applicant identification information including: name, address, telephone number, contact person and, for nonprofit corporations, corporate governing documents and financial information (e.g., articles of incorporation and by laws, certificate of good standing, confirmation of 501(c)(3) status, audited financial statements), identification of the administering entity, and list of legislative representatives for the area where the program or project will be undertaken.

(b) Governing board resolution in a form acceptable to the Department authorizing the application.

(c) Description of the Local Housing Trust Fund sufficient to ensure compliance with Health and Safety Code Section 50843.5 and this subchapter which at a minimum shall include:

(1) Documentation of establishment.

(2) Date of establishment.

(3) Date first funding received.

(4) Ongoing Revenue sources (distinguishing residential and non-residential Local Impact Fees).

(5) Documentation of Matching Funds On Deposit.

(6) Documentation of sufficient Ongoing Revenues.

(7) Documentation of the amount and source of Matching Funds and evidence that Matching Funds are derived from sources that are not restricted to housing uses.

(d) Local Housing Trust Fund operating guidelines including:

(1) Types of projects in which the fund will invest.

(2) Types of investments the fund will make (e.g., loans, grants).

(3) The required terms and conditions of the investment, including types of security and regulatory agreements, and periods of affordability.

(4) Any per unit or per project expenditure limitations.

(5) The eligible household income limitations and/or income targeting goals.

(6) The developer or owner eligibility requirements.

(7) Underwriting requirements.

- (8) The borrower or project match or leverage requirements.
- (9) Geographic area to be served.
- (e) Amount of Program Funds applied for and the amount to be used for: First-time Homebuyer downpayment assistance; housing for persons or households of Extremely Low Income, Very Low Income; Lower Income Households and housing for Moderate Income Persons and Families.
- (f) Description of the management and staffing of the Local Housing Trust Fund.
- (g) If the applicant proposes to use Program Funds for rental housing projects, a copy of the document to be recorded restricting the affordability of Program-funded projects for at least 55 years.
- (h) If the applicant proposes to use Program Funds for Homeownership Projects, a copy of the document to be recorded that meets the requirements of subdivision (d)(3) of Health and Safety Code Section 50843.5 or a specific statement as to the other public funding source or law in conflict with this requirement.
- (i) Certifications and Acknowledgements:
 - (1) Certification that the information submitted in the application is true and correct to the best of the knowledge of the signer, after reasonably diligent investigation.
 - (2) Certification of the applicant's intent to maintain the Local Housing Trust Fund in existence for at least five (5) years from the date of application; and acknowledgement and agreement that if the Local Housing Trust Fund ceases to exist sooner, then the applicant agrees to repay any remaining uncommitted Program Funds and to remit to the Department all repayment of loans made with Program Funds until the full amount of the Program grant is repaid.
 - (3) Acknowledgement and agreement that any Program Funds that are not encumbered within 36 months of receipt shall be returned to the Department.
 - (4) For nonprofit applicants, an acknowledgement and agreement that Program Funds shall be used only for projects located in a city, county, or city and county that have, at the time of application, an adopted housing element that the Department has determined to be in substantial compliance with State housing element law.
 - (5) Certification that the applicant has held, or agrees to hold, at least one public hearing to discuss and describe the Eligible Project or Projects that will be financed with Program Funds.
 - (6) For nonprofit applicants, an agreement that the applicant will hold at least one public meeting as required by subdivision (g) of Health and Safety Code section 50843.5.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7156. Application Process.

(a) For New Local Housing Trust Funds, the Department periodically shall issue a NOFA that specifies, among other things, the total amount of funds available, the total amount of funds available for New Local Housing Trust Funds in counties of less than 425,000 persons, the terms and conditions of the award of Program Funds and the final deadline for application. Applications will be accepted on an over-the-counter basis, and “complete” applications, as described in subsection (b)(1), will be funded on a first come-first serve basis until funds are exhausted, or the final deadline has expired, whichever occurs sooner. In the event that insufficient funds are available to fund all complete applications received on the same date, the applications will be evaluated and funded based on the criteria set forth in subdivision (b)(2), except there will be no preference given for meeting the requirement of subdivision (b)(2)(A).

(b) For Existing Local Housing Trust Funds, the Department shall periodically issue a NOFA that specifies, among other things, the amount of funds available, the terms and conditions of the award of Program Funds, and the application deadline.

(1) Only complete applications shall be considered for funding. In order to be considered “complete” an application must have substantially all of the information requested and provide adequate documentation and information for the Department to determine the Local Housing Trust Fund’s eligibility for funding pursuant to Health and Safety Code Section 50843.5 and this subsection. The applicant shall bear the burden of demonstrating compliance with these requirements.

(2) In the event that the amount of funding requested in complete applications exceeds the funds available, applications shall be evaluated and funded using criteria published in the NOFA, including, but not limited to the following, with a preference given to applications to the extent they meet the requirements of (A) and (B);

(A) The extent to which the applicant agrees to expend more than 65 percent of its Program Funds for the purpose of providing downpayment assistance to First-time Homebuyers.

(B) The extent to which the applicant agrees to provide Matching Funds from sources other than residential Local Impact Fees.

(C) The extent to which the applicant agrees to expend more than 30 percent of the total amount of its Program Funds and Matching Funds to serve persons and families of Extremely Low Income and ~~Very Low Income~~.

(D) The extent to which the applicant agrees to expend less than 20 percent of the total amount of its Program Funds and Matching Funds to serve persons and families with incomes exceeding 120 percent of the area median income.

(E) The extent to which the applicant agrees to provide Matching Funds in excess of the amount of Program Funds.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7157. Protection of Program Funds.

- (a) In order to protect the Program Funds awarded to a Grantee, the Grantee shall provide the Program Funds in the form of a loan evidenced by a promissory note the repayment of which shall be secured *either* by a deed of trust recorded ~~on~~ against the title to the real property or a security interest in the manufactured home being assisted with Program Funds. The promissory note shall contain a special provision that repayment shall be made to the Department in the event that the Grantee is no longer in operation.
- (b) Where Program Funds are provided to a rental housing development, emergency shelter, safe haven or transitional housing:
- (1) The Grantee and the housing developer borrower shall enter into a development loan agreement setting forth the terms and conditions for closing and disbursing the Program Funds which shall include, but not be limited to, requirements for title insurance for the deed of trust, and the borrower's responsibilities and obligations with respect to hazardous substance detection, disclosure, and remediation.
 - (2) The Grantee shall submit ~~copies of all~~ documentation of its loan guidelines and underwriting standards and procedures for review by the Department.
 - (3) The Department shall have the right to request copies of documentation of the activities of the Local Housing Trust Fund at any time prior to or after disbursement of Program Funds.
- (c) Where Program Funds are used ~~to acquire, construct or rehabilitation for sale housing~~ for a Homeownership Project the Grantee shall record a deed restriction in compliance with Health and Safety Code section 50843.5(d)(3) unless such a deed restriction would conflict with the requirements of law or another public funding source.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7158 Encumbrance Deadline and Application of Repayments.

- (a) Any Program Funds not encumbered by a Grantee by a loan commitment to the developer of an Eligible Project within 36 months of receipt shall promptly be returned to the Department.
- (b) Repayments of Program Funds received by a Grantee shall be retained by the Grantee in the Local Housing Trust Fund to be used for the purposes set forth in this subchapter.
- (c) If a Grantee ceases operations or Ongoing Revenues cease less than five years from the date of the Grantee's award of Program Funds, all unencumbered Program Funds shall promptly be returned to the Department, and all current and future loan repayments shall be remitted to the Department.
- (d) The total amount paid to the Department pursuant to (a) and (c) above and Section 7157(a) shall not exceed the amount of the Program Funds received by the Grantee.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7159. Legal Documents.

Upon the award of funds the Department shall enter into a standard agreement with the Grantee constituting a conditional commitment of funds. The standard agreement shall require the Grantee to comply with the requirements and provisions of these regulations and Health and Safety Code Section 50843.5 and shall, in addition, contain the following:

- (a) Encumbrance deadlines; project completion deadlines; and agreement termination date.
- (b) Grantee contract coordinator.
- (c) Disbursement conditions and documentation.
- (d) Remedies.
- (e) Insurance and inspection requirements.
- (f) Record retention and reporting requirements.
- (g) Prevailing wage requirements as applicable.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

Adopt §7160. Reporting.

Not later than October 1 of each year a Grantee shall provide to the Department an annual report, in a format specified by the Department, containing the following information:

- (a) A narrative summary of the Local Housing Trust Fund activities including:
 - (1) Work undertaken or completed in the reporting period, including the number, type and size of Eligible Projects receiving the proceeds of Program Funds.
 - (2) Activities planned to be undertaken in the next reporting period.
 - (3) Description of problems encountered in Program implementation; and a description of solution and timing of solution.
 - (4) Description of how problems may impact ability to complete or fulfill obligations under the Standard Agreement.
 - (5) Description of any technical assistance desired from the Department.
- (b) Financial summary including:
 - (1) Amount of Program Funds available at the beginning of the reporting period, the amount drawn down to date, and the remaining balance.
 - (2) Documentation of Matching Funds, including the amount by source, expended during the reporting period.
- (c) A summary of Eligible Projects assisted during the reporting period, including the project name, number of units, income levels assisted, and amount of Program Funds expended per unit.

Note: Authority Cited: Section 50406(n), Health and Safety Code. Reference: Section 50843.5 and Section 53545.9(c), Health and Safety Code.

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