

CHRP Regulations

§7670. Purpose and Scope.

(a) This subchapter establishes the California Housing Rehabilitation Program and implements and interprets chapter 6.5 (commencing with section 50660) of part 2 of division 31 of the Health and Safety Code, and chapter 12.45 (commencing with section 8878.15) of division 1 of Title 2 of the Government Code.

(b) These regulations establish procedures for the award and disbursement of loans and establish policies and procedures for use of these funds to rehabilitate rental housing developments.

(c) Until July 1, 1990, unless extended by statute, all loans from the Housing Rehabilitation Loan Fund for the rehabilitation of rental housing, with the exception of loans made pursuant to sections 50671 and 50671.5 of the Health and Safety Code, shall be governed by this subchapter, and this subchapter supersedes provisions of subchapters 5 (commencing with section 7400) and 5.5 (commencing with section 7450) of this chapter which conflict with provisions of this subchapter.

§7671. Definitions.

In addition to the definitions found in chapter 2 (commencing with section 50050), of part 1 of division 31 of the Health and Safety Code and subchapter 2 (commencing with section 6910) of chapter 6.5 of this Title, the following definitions shall apply to this subchapter. In the event of a conflict between these definitions and those, these definitions prevail for the purposes of this subchapter:

(a) "Assisted unit" means a dwelling unit, or a residential hotel unit, or a bedroom in a group home or congregate home, designated for occupancy or occupied by eligible households.

(b) "Congregate home" means a single-family house occupied by two or more households, each of which is capable of independent living but which chooses to live in one dwelling unit and to share the household responsibilities, including the maintenance of the structure and other responsibilities.

(c) "Conversion" means the alteration of nonresidential space within an existing structure to dwelling units or residential hotel units in a rental housing development.

(d) "Debt service coverage ratio" means the ratio of (1) operating income less operating expenses to (2) debt service payments, excluding prepayments.

(e) "Direct or supportive tenant services" means meals, transportation, recreational and social activities, independent living training, vocational training, counseling, and similar services provided or organized by the sponsor or its agent.

(f) "Director" means the Director of the Department of Housing and Community Development.

(g) "Distributions" means the amount of cash or other benefits received from the operation of the rental housing development and available to be distributed pursuant to section 7684 to the sponsor or any party having a beneficial interest in the sponsor entity, after payment of all due and outstanding obligations incurred in connection with the rental housing development. Distributions do not include payments for debt service, principal repayment, operations, maintenance, payments to required reserve accounts, property management or other services as set forth in the Regulatory Agreement for the rental housing development.

(h) "Eligible households" means very low-income households or other lower income households.

(i) "Fiscal integrity" means that the total of operating income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to (1) pay all current operating expenses, (2) pay all current debt service, (3) fully fund for at least twelve consecutive months all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement, (4) maintain a debt service coverage ratio as specified in the Regulatory Agreement, and (5) pay other extraordinary costs permitted by the Regulatory Agreement. The ability to pay any or all of the annual permitted distribution shall not be considered in determining fiscal integrity.

(j) "Fund" means the same as defined in section 8878.16(c) of the Government Code.

(k) "Group home" means a residential structure or structures where two or more handicapped persons or households reside in a group living arrangement and receive direct and supportive services provided under the supervision or oversight of the local public official responsible for services to the designated tenant population, including a residential facility as defined by section 1502 of the Health and Safety Code. Intermediate care or skilled nursing facilities are not considered group homes and are not eligible for funding. For purposes of this definition "handicapped" means a family in which the head of the household is suffering from an orthopedic disability impairing personal mobility or a physical disability affecting his or her ability to obtain employment or a single person with such an orthopedic or physical disability, where the family or person requires special care or facilities in the home; or person requires special care or facilities in the home; or a family in which the head of household suffers from a developmental disability specified in subdivision (a) of section 4512 of the Welfare and Institutions Code or a mental disorder which would render him or her eligible to participate in programs of rehabilitation or social services conducted by or on behalf of a public agency, or a single person with such a developmental disability or mental disorder.

(l) "Household income" means the same as "gross income" as defined in section 6914 of this Title

(m) "Initial operating year" means the first year of operation, or portion thereof, of the rehabilitated rental housing development beginning at the time of initial occupancy of an assisted unit and ending on the last day of the fiscal year of that development

(n) "Limited equity housing cooperative" means an entity defined by section 50076.5 of the Health and Safety Code. All requirements in this subchapter shall be applicable to units and residents of limited equity housing cooperatives unless the context indicates otherwise

(o) "Local agency" means the same as defined in section 8878.16(d) of the Government Code

(p) "Lower income household" means persons or families as defined in section 50079.5 of the Health and Safety Code

(q) "Nonprofit corporation" or "nonprofit sponsor" means the same as "nonprofit corporation" as defined in section 50091 of the Health and Safety Code

(r) "Operating expenses" means the amount approved by the department that is necessary to pay for the essential recurring expenses of the project, such as utilities, maintenance, management, taxes, and licenses, and mandatory direct or supportive tenant services but not including debt service, required reserve account deposits, or costs for voluntary direct or supportive tenant services

(s) "Operating income" means all income generated in connection with the operation of the rental housing development including rental income for assisted and non-assisted units, rental income from nonresidential space, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts related to the rental housing development. "Operating income" does not include security and equipment deposits, payments for direct or supportive tenant services that tenants are not required to pay for as a condition of occupancy, or tax benefits received by the sponsor

(t) "Potentially hazardous building" means the same as defined in section 8875(a) of the Government Code

(u) "Program" means the California Housing Rehabilitation Program

(v) "Project" means a rental housing development, the rehabilitation, or rehabilitation and acquisition, and operation thereof, using program funds, and the financing structure and all agreements and documentation approved in connection therewith

(w) "Reconstruction" means replacing an existing residential structure with a rental housing development of similar type, with not less than an equal number of units and bedrooms and level of amenities

(x) "Rehabilitation" means repairs and improvements to a substandard rental housing development necessary to correct defects causing it to be a substandard building pursuant to section 17920.3 of the Health and Safety Code, and to meet rehabilitation standards as defined in section 50097 of the Health and Safety Code. Rehabilitation also includes reconstruction or conversion

(y) "Rent" means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an assisted unit and any mandatory charge for direct or supportive tenant services in a rental housing development, whether the units are rented or operated as a limited equity housing cooperative. In a group home, when mandatory charges include direct or supportive tenant services, "rent" means that amount designated for room charges by the Department of Social Services or other agency responsible for services to the designated tenant population

(z) "Rent-up costs" means costs incurred in connection with marketing and preparing an assisted unit for occupancy while the unit is on the housing market but not rented to its first tenant

(aa) "Rental housing development" means the same as defined in section 50668.5(h) of the Health and Safety Code and includes housing for the elderly or handicapped as authorized in section 50669 of the Health and Safety Code

(bb) "Rural area" means the same as defined in section 50101 of the Health and Safety Code

(cc) "Seismic rehabilitation improvements" means the same as defined in section 50668.5(b)(5) of the Health and Safety Code

(dd) "Substandard rental housing development" means a structure or structures used or intended to be used as a rental housing development which is a substandard building pursuant to section 17920.3 of the Health and Safety Code

(ee) "Very low-income household" means persons or families as defined in section 50105 of the Health and Safety Code.

§7672. Eligible Project.

(a) To be eligible for funding, a proposed project must involve one or more of the following structures:

(1) a substandard rental housing development that will have one or more assisted units;

(2) a rental housing development eligible for seismic rehabilitation improvements pursuant to section 7675;

(3) an existing structure that will undergo a conversion and will have one or more assisted units;
or

(4) an existing substandard residential structure that will undergo reconstruction and will have one or more assisted units.

(b) To be eligible for funding, a proposed project must involve either rehabilitation or seismic rehabilitation improvements.

(c) To be eligible for funding, a proposed group home project must have the written support of the local official responsible for services to the designated tenant population in the jurisdiction in which the proposed project is located, such as the Mental Health Director or Regional Center Director, and must be designated by that local official as being an intrinsic part of that agency's established service delivery system.

§7673. Eligible Sponsor.

(a) A sponsor shall be any individual, joint venture, partnership, limited partnership, trust, corporation, limited equity housing cooperative, local public entity, duly constituted governing body of an Indian reservation or rancheria, or other legal entity, or any combination thereof meets the requirements of subdivision (c).

(b) A sponsor may be organized on a for-profit, including limited profit, or nonprofit basis.

(c) In order to be eligible for funding, an applicant must be a sponsor who:

(1) demonstrates ability or experience relevant to owning, rehabilitating, and operating rental housing through any of the following:

(A) prior ownership, rehabilitation and operation of rental housing;

(B) staff with demonstrated ability or experience owning, rehabilitating and operating rental housing; or

(C) contracting with a consultant or consultants with demonstrated ability or experience assisting with the owning, rehabilitation and operation of rental housing; and

(2) has site control of the proposed project property by one of the following:

(A) fee title;

(B) a leasehold interest on the project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all program requirements;

(C) an option to purchase or lease;

(D) a disposition and development agreement with a public agency;

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

§7674. Eligible Uses of Funds.

(a) Funds may be used only for eligible costs that are incurred on the project as set forth in this section. In addition, the costs must be necessary and must be consistent with the lowest reasonable cost given consistent with the project's scope and area.

(b) Eligible categories of costs include the following:

(1) acquisition of project property, including existing improvements, and costs related to such acquisition;

(2) refinancing of that amount of debt existing at the time of application which is necessary to achieve rents for low- and very-low income tenants in accordance with program requirements and costs related thereto;

(3) reconstruction, when the estimated cost including demolition, construction and related activities is less than the estimated cost of rehabilitation of the rental housing development;

(4) conversion when the resulting units are of modest design and with modest amenities and when the estimated total rehabilitation cost is less than the new construction cost of comparable units in the area;

(5) costs of rehabilitation necessary to correct code violations and those costs directly related to the correction of code violations;

(6) general costs required to correct unsafe, unhealthy and unsanitary conditions, and which are directly related to the project, including the following:

(A) general property improvements when the sponsor can demonstrate that such improvements are integral to the project;

(B) work related to protecting the physical security;

(C) work related to reducing long-term maintenance costs;

(D) other on-site and off-site improvements.

(7) seismic rehabilitation improvements, and work directly related thereto pursuant to section 7675;

(8) architectural, appraisal, engineering, legal and other consulting costs and fees, which are directly related to the planning and execution of the project and which are incurred through third-party contracts;

(9) administrative expenses pursuant to section 7680;

(10) rent-up costs;

(11) carrying costs during construction, including insurance, financing, and taxes;

(12) building permits and state and local fees;

(13) work lawfully required by a governmental entity which is reasonably required as a condition of project approval to correct unsafe, unhealthy or unsanitary conditions;

(14) relocation benefits and assistance to lower income residential tenants displaced as a result of acquisition and/or rehabilitation. All other temporary and permanent relocation benefits specified in section 7685 are not eligible uses of program funds;

(15) escrow, title insurance, recording and other related costs.

(c) If only a portion of the rental housing development consists of assisted units, funds from the fund may be used for the costs of all items specified in subdivision (b) associated exclusively with the assisted units. They may also be used for a share of the cost of such items that cannot specifically be allocated to either assisted units or non-assisted units or nonresidential space. This share shall not exceed an amount in direct proportion to the ratio between the gross floor area of the assisted units and the total gross floor area of the structure. No program funds may be used for costs associated exclusively with non-assisted units or nonresidential space except pursuant to section 7675.

§7675. Seismic Rehabilitation Improvements.

(a) To be eligible to receive program funds for seismic rehabilitation improvements, a project must:

(1) be located within the jurisdiction of a local agency that has completed an inventory of unreinforced masonry buildings and has adopted a seismic mitigation program or ordinance pursuant to section 8875.2 of the Government Code or section 19163 of the Health and Safety Code;

(2) involve a structure which is identified as a potentially hazardous building by the local agency in which it is located; and

(3) involve a structure that contains, or will contain, at least six dwelling or residential hotel units, where at least 70 percent of all dwelling or residential hotel units will be assisted units and at least 50 percent of the total gross floor area will be used for residential purposes.

(b) Only program funds allocated pursuant to Government Code section 8878.20 may be used for seismic rehabilitation improvements and work directly related thereto.

(c) If only a portion of the rental housing development consists of assisted units, no program funds shall be used with respect to the nonresidential space or non-assisted units unless both of the following apply:

(1) The funds are used for seismic rehabilitation improvements and work directly related thereto; and

(2) The funded activity is integral to the seismic rehabilitation improvements and work related thereto being performed on the assisted units.

(d) Where program funds are used to pay any costs associated with seismic rehabilitation improvements, and work directly related thereto, of nonresidential space, cash distributions for the entire structure shall be limited in accordance with section 7684.

§7676. Term of Loan.

(a) For projects involving rehabilitation and either acquisition or refinancing, the initial loan term shall be 30 years. For projects involving only rehabilitation, the initial loan term shall be 20 years.

(b) Upon request by the sponsor, the department shall approve an initial loan term longer than those set forth in subdivision (a) provided that such longer term does not exceed the useful life of the rental housing development as determined by the department utilizing general industry standards.

(c) Upon request by the sponsor, the department may approve one or more ten-year extensions of the loan term, if the department determines prior to granting each extension that both of the following are met:

(1) The sponsor is in compliance with the Regulatory Agreement and agrees to continue to comply during the extended term; and

(2) The extension is necessary to continue operations consistent with program requirements.

(d) The department may condition each extension on such terms as it deems necessary to ensure compliance with the requirements of this program.

§7677. Maximum Loan Amounts.

(a) The maximum loan amounts shall correspond to the loan limits provided in subdivision (a)(1) of section 7460 of this Title. The amounts for a small apartment unit and for a large apartment unit shall be the same as the limits provided for a small unit and for a large unit. The amounts for a single-family house shall be the same as the limits for a single-family dwelling. (The amounts for a residential hotel unit shall be the same as those limits shown for a residential hotel unit.)

(b) The loan amount is limited to the amount required when considered with other available financing, in order to achieve all of the following:

(1) to enable the rehabilitation and either acquisition or refinancing, or rehabilitation only, of the rental housing development;

(2) to ensure that rents for assisted units are in accordance with program requirements; and

(3) to operate in compliance with all other program requirements.

(c) The total maximum loan amount shall not exceed the number of assisted units multiplied by the maximum loan amount for the unit type as set forth in subdivision (a)(1) of section 7460 and subdivision (a) of this section.

(d) The department may approve a higher loan amount per assisted unit if the sponsor is unable to otherwise finance project costs and the department determines that either of the following circumstances exists:

(1) The higher loan amount for any assisted unit or units is consistent with the lowest reasonable cost of similar projects in the same area meeting minimum rehabilitation or seismic code standards, other eligible and necessary costs, and local building and land use requirements; or

(2) The higher loan amount for any assisted unit or units is necessary to correct severe health and safety defects or to meet handicapped accessibility standards.

§7678. Interest Rate and Loan Repayments.

(a) Loans shall bear simple interest of three percent per annum on the unpaid principal balance. Interest shall accrue from the date that funds are disbursed by the department to an escrow holder on behalf of the sponsor.

(b) Accrued interest shall be payable annually to the department commencing no later than the sixtieth (60th) day after the last day of the initial operating year and continuing no later than that date annually thereafter until the loan is paid in full.

(c) Upon request by the sponsor, the department may permit periodic payments of principal, provided that the resulting additional debt service will not jeopardize the fiscal integrity of the project or the sponsor's ability to maintain rents in accordance with program requirements. The department may approve a repayment plan at loan closing or any time thereafter, subject to the following:

(1) The repayment plan shall be based on actual or projected net cash flow which shall be calculated by subtracting from total operating income the sum of the amounts necessary for project fiscal integrity plus the amount for the allowable distribution to sponsor pursuant to section 7684.

(2) The repayment plan may include provision for an incentive payment to the sponsor not to exceed the proposed repayment to be applied to the principal. Such payment to the sponsor shall be in addition to the sponsor's permitted distribution pursuant to section 7684.

(3) The additional debt service and any payments to sponsor under this subdivision shall not be included in determining compliance with the project's debt service coverage ratio requirements of Health and Safety Code section 50668.5(d).

(d) Upon request by the sponsor, the department may approve, either at loan closing or any time thereafter, the deferral of accrued interest for such periods and subject to such conditions as may enable the sponsor to maintain affordable rents and maintain the fiscal integrity of the project.

(e) The total amount of the outstanding principal and interest, including deferred interest, shall be due and payable in full to the department at the end of the loan term including any extension granted by the department, or upon the department's termination of the loan.

§7679. Loan-to-Value Limits.

(a) The ratio of total indebtedness secured by the project property, including the department's loan, to the total after-rehabilitation value of the project property shall not exceed 90 percent, except when the sponsor is a nonprofit sponsor, in which case the ratio shall not exceed 100 percent. In the event there is a transfer of the project between a for-profit sponsor and a nonprofit sponsor, the loan-to-value ratio applicable to the acquiring party shall apply to the project upon transfer.

(b) The after-rehabilitation value shall be based on an appraisal, undertaken at the sponsor's expense, that

(1) is prepared by an individual who:

(A) has the knowledge and experience necessary to appraise income property competently;

(B) is aware of, understand, and correctly employs those recognized methods and techniques that are necessary to produce a credible appraisal;

(C) in reporting the results of the appraisal, communicates each analysis, opinion, and conclusion in a manner that is not misleading as to the true value and condition of the property;

(D) if developing a business appraisal, is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible appraisal;

(E) in reporting the results of a business appraisal, communicates each analysis, opinion, and conclusion in a manner that is not misleading as to the true value and condition of the property.

(2) utilizes all of the following methods to determine value:

(A) sales of comparable developments;

(B) capitalization of income;

(C) replacement cost; and

(3) includes the pre-rehabilitation value, if requested by the department.

(c) The department shall not accept any appraisal that does not conform to the provisions of subdivision (b).

(d) The department shall accept the valuation from the replacement cost method as the after-rehabilitation value of the project property when the department determines that such method accurately reflects sufficient value in the project to meet the loan-to-value limits pursuant to this section.

§7680. Administrative Expenses.

(a) Administrative expenses are those expenses incurred by the sponsor related to the planning and execution of the project. Such expenses include, but are not limited to the following:

(1) salaries, wages, and related costs of the sponsor's staff engaged in the planning and execution of the project, including general legal services, accounting and auditing relating to the sponsor's operations, and financial packaging;

(2) travel costs and other general overhead costs which are attributable to the project;

(3) expenses for sponsor's administrative services performed and paid for under third-party contracts.

(b) Administrative expenses do not include those legal, architectural, engineering, or financial fees which are directly related to the planning and execution of the project and which are incurred by the sponsor through third-party contracts eligible for funding pursuant to section 7674(b)(8).

(c) Sponsors seeking program funds for administrative expenses shall include in their application a statement of administrative expenses incurred to date, and a budget for anticipated administrative expenses. The statement and budget shall include sufficient detail and explanation to permit the department to determine eligibility and reasonableness of the expenses. The department may include in the loan amount those administrative expenses shown in the statement and anticipated budget provided it determines that those expenses are reasonable and necessary considering the nature and scope of the project.

(d) The department shall not fund administrative expenses in excess of 10 percent of the approved loan amount unless the sponsor can demonstrate to the department's satisfaction that costs in excess of this limitation are the result of expenses such as those incurred for architectural, engineering, and legal services, which would otherwise qualify for funding as consultant services pursuant to section 7674 (b)(8).

§7681. Occupancy Requirements.

(a) A unit in a rental housing development may be designated as an assisted unit if at the time of initial application:

(1) the unit is occupied by an eligible household;

(2) the unit is vacant and will remain available to an eligible household; or

(3) a noneligible household residing in the unit has agreed not to return to the unit as evidenced by a signed waiver of the tenant's right pursuant to section 7265.3(d) of the Government Code to return to the unit after rehabilitation. Any such waiver must be in writing and meet the notice requirements of section 7685(f).

(b) The sponsor shall designate as assisted units, at a minimum, the same number of units as were reasonably known to be occupied by eligible households residing in the rental housing development at the time of initial application.

(c) All rooms rented in a congregate home, and all rooms designated for use by the client group in a group home shall be designated for occupancy by eligible households.

(d) The size, type and amenity level of assisted units after rehabilitation shall not substantially differ from the size, type, and amenity level of units as were known to be occupied by eligible households residing in the rental housing development at the time of initial application to the program. Units which are reconfigured or enlarged to alleviate overcrowding shall not be considered a violation of this provision.

(e) A proposed project receiving rating points pursuant to section 7689 for serving very low-income households shall reserve at least this number of units for occupancy by very low-income households for the full loan term.

(f) The number, size, type, and amenity level of assisted units, and assisted units designated for very low-income occupancy, shall not be fewer than the number nor substantially different from the size, type and amenity level designated in the Regulatory Agreement for the full loan term.

§7682. Tenancy Standards.

(a) Sponsors shall select only eligible households as tenants of assisted units. The sponsor shall develop a tenant selection plan for assisted units which shall be subject to the approval of the department. The plan shall include the following:

(1) an affirmative marketing plan which shall include policies and steps to ensure equal access to all housing units in the rental housing development for all persons in any category protected by federal, state or local laws governing discrimination, and regardless of any other arbitrary factor.

(2) reasonable criteria for selection or rejection which shall not discriminate in violation of any federal, state or local laws governing discrimination, or any other arbitrary factor.

(3) prohibition of local residency requirements.

(4) tenant selection procedures that include the following requirements:

(A) selection of tenants based on order of application, lottery or other reasonable method approved by the department;

(B) notification of tenant applicants of eligibility and, based on turnover history, when a unit may be available;

(C) notification of tenant applicants of ineligibility to occupy an assisted unit and the reason for the ineligibility; and

(D) maintenance of a waiting list of eligible households applying to occupy assisted units and if applicable, which distinguishes between lower and very low-income tenants.

(5) tenant occupancy standards that shall be used by the sponsor upon both initial occupancy and recertification to determine a tenant's unit size, as follows:

<i>Unit</i>	<i>Minimum No. of</i>
<i>Size</i>	<i>Persons in Household</i>
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	6

(A) Flexibility for assignment by a sponsor to a different sized unit is permitted if the sponsor reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant's file.

(B) If at the time of recertification, the tenant's household size has changed and no longer meets the minimum occupancy standards pursuant to this subdivision, tenant household shall be required to move to the next available appropriately sized unit pursuant to this subdivision.

(b) The sponsor shall submit for Department approval the form of the rental agreement for assisted units prior to its use. The form shall include the following:

(1) provisions requiring good cause for termination of tenancy. One or more of the following constitutes "good cause:"

(A) failure by the tenant to maintain eligibility under the program;

(B) material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which

1. adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities;

2. substantially interfere with the management, maintenance, or operation of the rental housing development;

3. result from the failure or refusal to pay, in a timely fashion, rent or other charges when due. Failure or refusal to pay in a timely fashion is a substantial violation of the lease when there is nonpayment of rent or other financial obligations under the lease after a three-day notice to pay rent or quit, but such failure or refusal to pay in a timely fashion is a minor violation if payment is made during the three-day notice period.

(C) material failure by the tenant to carry out obligations under state or local law;

(D) subletting by the tenant of all or any portion of the assisted unit;

(E) actions or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant and for which the sponsor previously notified the tenant that the conduct in question would be considered cause for eviction. These may include the refusal after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size.

(2) a provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;

(3) establishment of grievance procedures for hearing complaints of tenants and appeal of management action;

(4) a requirement that the tenant annually recertify household income and size.

(c) If, upon notification of tenant or at the time of recertification, the tenant's household income extends the upper limit for lower income households, the tenant's lease shall terminate six months after the date of recertification and the tenant shall be required to vacate the assisted unit.

(1) If the tenant provides to the sponsor additional evidence which establishes income eligibility prior to the expiration of the six months, the tenant shall not be required to vacate the assisted unit.

(2) Upon determination by the sponsor that the rental housing development is located in a high cost rental area with low rental vacancy rates as determined by the department, the sponsor may approve one additional six-month extension of the lease.

(3) If the assisted unit is subject to state or federal rules governing low-income housing tax credits, those eligibility provisions shall govern continued eligibility for occupancy.

(4) In a limited equity housing cooperative where the household income of a tenant occupying an assisted unit exceeds the upper limit for lower income households, the tenant shall not be required to vacate the assisted unit.

(A) After recertification and determination of ineligibility, the sponsor shall immediately notify the tenant that the rent will increase to a market rate payment six months after said notification. Market rate payment shall be the rent paid for a comparable unassisted unit, or the rent charged for comparable units in the area. This market rate payment shall be subject to department approval.

(B) The next available membership share for occupancy in a comparable unit shall be sold to an eligible household.

(d) If the income of a household residing in a unit designated for occupancy by very low-income households changes from very low-income to other lower income at the time of recertification, the following shall apply:

(1) The household shall not be required to vacate the unit;

(2) The sponsor shall charge rent that does not exceed the highest current rent allowed for any comparable assisted unit designated for occupancy by lower income households pursuant to section 7683, or where there are no such units, the maximum rent which would be allowed pursuant to section 7683;

(3) The sponsor shall designate the unit as an assisted unit for lower income households until the lower income household vacates the unit; and

(4) The sponsor shall designate the next available comparable assisted unit as an assisted unit for very low-income households until the unit mix required by the Regulatory Agreement is achieved.

(5) In a limited equity housing cooperative, where the tenants in an assisted unit designated as a very low-income unit becomes an other lower-income household, the sponsor shall comply with the provisions of subdivisions (d)(1) through (d)(4).

§7683. Rent Standards.

(a) The department shall establish initial rent for assisted units in each project in accordance with the tables in section 6932 and the following:

(1) Rents for units reserved for occupancy by lower income households shall not exceed 30 percent of 60 percent of the monthly area median income for the household size specified in subsection (a)(2) below at the time of initial occupancy.

(2) The household size to be used in calculating maximum rent shall vary based on unit size as follows:

Applicable Household

<i>Unit Size</i>	<i>Income Limit</i>
residential hotel	75 percent of 1 person, which
unit or	may be multiplied by
bedroom in a group home	2 for group homes if there are

or congregate home

2 occupants per bedroom

0 bedroom

1 person

1 bedroom

2 person

2 bedrooms

3 person

3 bedrooms

4 persons

4 bedrooms

6 persons

5 bedrooms

8 persons

3) The maximum rent to be charged to tenants shall be determined by deducting from the maximum amounts calculated pursuant to (a)(1) and (a)(2) a utility allowance (for the appropriate unit size) determined or approved by the United States Department of Housing and Urban Development under section 8 of the United States Housing Act of 1937, section 1437f, Title 42 U.S.C., for the locality in which the rental housing development is located. Where a tenant does not directly pay for utilities, the utility allowance deduction shall be zero.

(4) As used in this section "rent" does not include any payment to a sponsor under section 8 of the United States Housing Act of 1937, section 1437f, Title 42 U.S.C., or any comparable federal or state rental assistance program.

(5) For an assisted unit occupied by an eligible household at the time of initial application to the program, the after-rehabilitation rent may not exceed the greater of (i) the rent charged at the time of initial program application, or (ii) 25% of the subject tenant household's monthly gross income. In no event is the rent to exceed that which could be charged pursuant to subdivision (a)(1), (2), and (3) above.

(b) After the initial operating year, rents in assisted units may be adjusted no more often than annually. The amount of adjustment for assisted units shall be in accordance with the following:

(1) Rents may be increased at a rate not to exceed the most recently published annual average percentage change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, Residential Rent for All Urban Consumers for the West (CPI), multiplied by the ratio of the previous year's budgeted operating expenses plus required reserves to the previous year's operating income attributed to residential units;

(2) In addition to the rent increase allowed pursuant to subdivision (b)(1), rents may be increased by that amount necessary to increase the operating income to cover changes in debt service on an adjustable rate mortgage approved by the department as part of the project;

(3) Notwithstanding the provisions of subdivisions (b)(1) and (b)(2), rents shall be decreased if there are changes in debt service approved by the department after loan closing when such changes improve the financial condition of the project. The rent shall be decreased by an aggregate amount equal to the amount of the monthly payment reduction.

(4) Except as provided in section 7685(e)(1), the first adjustment after the initial operating year shall be prorated based on the allowable rent increase multiplied by the fraction of a full year which constitutes the initial operating year.

(c) The sponsor may request for a greater rent increase if the sponsor can demonstrate, to the department's satisfaction, that the increase is necessary to pay for unusual or unforeseeable increases in costs related to the assisted units and to preserve fiscal integrity. The sponsor may not receive a greater rent increase on the grounds that fiscal integrity is threatened by a shortfall in income, unanticipated expenses or other financial problems attributable to nonresidential space or nonassisted units.

(d) Any allowable rent increase or portion thereof not implemented by the sponsor in any given year may not be accumulated for implementation in subsequent years.

(e) Where the assisted units are rent restricted as a condition of the low-income housing tax credit or other state and federal rent subsidy programs, the initial rent for assisted units and subsequent rent increases shall be the lower of those permitted under subdivisions (a), (b), or (c), or those permitted under the applicable tax credit or other programs.

(f) The sponsor shall submit requests for rent adjustments pursuant to subdivision (c) above as part of the annual operating budget pursuant to section 7696.

§7684. Limits on Distributions.

(a) A sponsor shall be limited to an annual distribution on the sponsor's actual investment in the project in an amount not to exceed eight percent per annum. A sponsor may not accumulate distributions from year to year.

(1) For a project involving only rehabilitation and no acquisition or refinancing, actual investment is determined as follows: the market value of the rental housing development prior to rehabilitation, as determined in an appraisal, less outstanding debt prior to rehabilitation, plus any cash contributions to the project made by the sponsor.

(2) For a project involving rehabilitation and either acquisition or refinancing, actual investment is the amount of any cash contributions to the project made by the sponsor. Cash contributions do not include government assistant or private donations, other than the sponsor's, to the project.

(b) In its initial operating budget, the sponsor shall demonstrate to the department the amount of the sponsor's actual investment in the residential portion of the project on which the allowable distribution will be calculated. The actual investment amount may be increased in subsequent budgets upon a showing of additional actual investment other than prepayments of principal advanced by the sponsor.

(c) Distributions shall be permitted only after the sponsor submits a complete annual report and operating budget and the department determines that the report and budget demonstrate compliance with all program requirements for the applicable year.

(d) Distributions attributed to the nonresidential space shall not be subject to limits pursuant to this section, except where program funds have been used for nonresidential space pursuant to section 7675(c). Where program funds have not been used pursuant to section 7675(c), then for purposes of calculating allowable distributions, operating income and expenses shall not include income or expenses from nonresidential space.

(e) No distributions shall be made in the following circumstances:

(1) when written notice of default has been issued by any entity with an equitable or beneficial interest in the rental housing development;

(2) when the department determines that the sponsor has failed to comply with the department's written notice of any reasonable requirement for proper maintenance or operation of the rental housing development;

(3) if all currently required debt service and operating expenses have not been paid;

(4) if the replacement reserve account or any other reserve accounts are not fully funded pursuant to section 7696 and the Regulatory Agreement.

(f) When operating income is greater than approved operating expenses, debt service, scheduled reserve deposits, approved prepayments, approved annual distributions, and any other disbursements approved by the department, then the sponsor shall pay such excess income into the Residual Receipts Account established pursuant to section 7697. Where program funds have not been used for costs attributable to nonresidential space pursuant to section 7675(c) and for purposes of calculating the amount of excess funds pursuant to this subdivision, operating income and expenses shall not include income or expenses from nonresidential space.

§7685. Relocation Requirements.

(a) It shall be the sponsor's responsibility to ensure compliance with the relocation provisions set forth in this section. Loan funds may be used for relocation costs attributable to the lower income tenants as a result of the rehabilitation activities, including the payment of benefits required by this section. The department may authorize increases in the sponsor's approved loan amount for the purpose of paying eligible relocation costs attributable to lower income households, which could not be reasonably foreseen by the sponsor at the time of application. Eligibility and relocation benefits shall be determined as set forth in this section, although additional requirements may be imposed by applicable federal, state, or local laws.

(b) All tenants in occupancy in a property who are permanently displaced as a direct result of an acquisition funded in whole or in part with program funds shall be entitled to relocation benefits as provided in chapter 16 (commencing with section 7260) of division 7, Title 1 of the Government Code.

(c) In the case of an acquisition funded in whole or in part with program funds, all existing residential tenants as well as residential tenants who were in occupancy on the date that the sponsor entered into the binding agreement for the purchase of the property shall be provided with a notice as specified herein no later than the date of application to the department for program funds. The notice shall contain all the following information:

(1) a statement that the sponsor has entered into an agreement to purchase the property;

(2) a statement that the sponsor is applying for public funds for the purpose of acquiring and rehabilitating the property;

(3) a statement that if the sponsor's application is funded and the rehabilitation work requires temporary relocation, all residential tenants will be entitled to return to their units; will be entitled to temporary relocation benefits; and if lower and moderate income, will have any rent increases limited to a total rent of no more than 25 percent of their incomes for a period of one year from the completion of the rehabilitation work;

(4) a statement that all residential tenants who are permanently displaced as a direct result of this acquisition may be entitled to financial benefits, which could include moving expenses and rent differential as required by law;

(5) a statement that if the application is funded, the sponsor will be required as a condition of funding to conduct a tenant survey including verification of tenants' incomes. A tenant's failure to provide complete and accurate information may result in the loss of some of the financial benefits described above;

(6) a statement indicating who to contact for further information or to make a claim.

(d) Any residential tenant who was in occupancy at the time of application to the department for funds and who is displaced to accommodate rehabilitation work shall be provided with temporary housing benefits for a period of up to 90 days, and shall be given the option of returning, after rehabilitation, to the unit from which he or she was displaced.

(e) Any residential tenant whose household income is lower or moderate as defined in section 50093 of the Health and Safety Code shall be entitled to the following benefits and shall be subject to the following additional provisions:

(1) After-rehabilitation rents shall not be raised to a level which exceeds 25 percent of that household's income for 12 months subsequent to the completion of rehabilitation. A tenant whose income is lower or moderate, but refuses to provide the income information necessary to establish rents pursuant to this paragraph shall not be eligible for relocation benefits due to an increase in rent in excess of that permitted by this paragraph. Income surveys to ensure compliance with the requirements of this paragraph and applicable relocation laws shall be completed prior to disbursement of program funds.

(2) A residential tenant or household whose income is lower or moderate shall be entitled to all relocation benefits provided pursuant to chapter 16 (commencing with section 7260) of division 7 of Title 1 of the Government Code if such tenant or household is permanently displaced as a direct result of the rehabilitation work.

(3) A residential tenant or household whose income is lower or moderate and whose temporary displacement exceeds 90 days shall be deemed permanently displaced and may elect to receive benefits on a monthly basis while retaining the right to reoccupy the previously occupied unit. When a tenant elects to receive his or her permanent relocation benefits pursuant to this paragraph on a lump sum basis, the tenant shall have waived his or her right to return to the unit upon completion of the rehabilitation.

(f) All residential tenants shall be given a notice which specifies their rights pursuant to this section no later than the time of application to the department for program funds. Any tenant's waiver of a right set forth in this section must be in writing and must specify in detail the relocation rights being waived.

(g) Any nonresidential tenant at the time of application by the sponsor to the department for program funds shall be entitled to relocation assistance and benefits to the extent required by applicable law from funds other than program funds.

(h) The sponsor shall prepare a relocation plan in conformance with the provisions of section 6038(b) of this Title based on the scope of the project and the extent of anticipated displacement. The relocation plan shall be subject to the review and approval of the department prior to the disbursement of program funds.

§7686. Construction Requirements.

(a) The department shall review and underwrite project plans and specifications to ensure the following objectives:

(1) The rental housing development shall have a minimum useful life of 20 years for projects proposing only rehabilitation and 30 years for projects proposing rehabilitation and either acquisition or refinancing; and

(2) Maintenance, repair, and replacement costs shall be minimized during the useful life of the rental housing development.

(b) The sponsor shall ensure that the rehabilitation work for the project all be performed in a competent, professional manner at the lowest reasonable cost consistent with the project's scope and locality and not in excess of the total funds available. The sponsor may demonstrate the reasonableness of the proposed cost by soliciting bids based on a bid package distributed to potential licensed contractors located in the general area of the rental housing development or by the use of other methods which adequately demonstrate to the department's satisfaction that the costs are reasonable. Such bid package or other method shall include at a minimum:

(1) complete plans and specifications for the work; and

(2) a full description of the program requirements for rehabilitation, including the required provisions of the construction contract.

(c) The sponsor shall only enter into written contracts with contractors possessing valid California contractor's licenses. The contract shall be subject to the prior approval of the department to determine compliance with program requirements.

(d) The construction contract shall be a completely integrated agreement containing all the understandings, covenants, conditions and representations between the parties and, at a minimum, contain provisions which:

(1) require that the contractor complete the work in accordance with the approved plans and specifications and applicable local, state and federal laws, regulations and building codes and standards;

(2) require the contractor to proceed with and complete the work in accordance with the approved schedule for work;

(3) specify a total contract price consistent with the approved project budget;

(4) provide for a method of payment to the contract or consistent with program requirements which may include progress payments and retentions;

(5) require that the contractor provide a payment bond securing payment to persons providing goods or services to the project and a performance bond securing faithful completion of the work. Each bond shall be in an amount equal to 50 percent of the total contract price and include

the department as a dual obligee. The department may waive the payment and performance bond requirements, or reduce their scope, upon the sponsor's either:

(A) providing alternative security for payment and performance under the construction contract which is substantially equivalent to the bond requirements, or

(B) demonstrating that the bonds, or the full amount thereof, are not necessary to protect the interests of the department and ensure completion of the rehabilitation work;

(6) permit the sponsor and the department and their designated agents and employees the right to inspect the project site and all books, records and documents maintained by the contractor in connection with rehabilitation work;

(7)(A) require the contractor to maintain insurance coverage in the following amounts:

1. Comprehensive General Liability Insurance in a minimum amount of \$1,000,000 including: premises, operations, products/completed operations hazard, contractual insurance, independent contractor's protection, and personal injury, or their equivalent;

2. Broad Form Property Damage in a minimum amount of coverage equal to the total of all existing loans secured against the property;

3. Comprehensive Automotive Liability, including bodily injury of \$1,000,000 per occurrence and per person and \$1,000,000 or the total of existing loans secured against the property, whichever is greater, in Property Damage coverage;

4. Worker's Compensation and Employer's Liability Insurance to the extent required by State law.

(B) require the contractor to provide prior to the commencement of construction proof of coverage as evidenced by a Certificate of Insurance or a binder followed by a Certificate within thirty days.

(C) require all policies to include the sponsor and the department and its officers, agents, and employees, named as additional insureds.

(D) require the policies to include a cancellation clause notifying the department 30 days prior to cancellation of the policies. The department may approve alternate amounts of coverage based on the size of the project and scope of work to be performed.

(8) obligate the contractor to warrant the rehabilitation work for a period of not less than one year;

(9) require that the contractor pay all amounts when due for labor, work performed under subcontract, or materials, supplies and equipment provided to the project;

(10) provide for the assignment of the construction contract to the department upon sponsor's breach of the Rehabilitation Loan Agreement;

(11) include such special conditions applicable to the construction contract as may have been imposed in connection with the department's approval of the project for funding;

(12) require that the general contractor require all subcontractors to maintain similar insurance coverage as mentioned above, with the exception that the subcontractor's insurance need not name the sponsor or the department as additional insureds, and the minimum amount of coverage shall be \$500,000.

(e)(1) The sponsor shall insure the property before, during, and after construction at the following minimum levels:

(A) Hazard (property) insurance to include:

1. all risk, or fire and lightning, extended coverage, vandalism and malicious mischief, or equivalent;

2. coverage of the entire structure to include all risk contents coverage;

3. replacement cost coverage or total value;

4. a maximum deductible per occurrence of \$2,500, or \$1,000 if the completed project value is less than \$300,000;

5. a lenders loss payable endorsement insuring the department.

(B) Other property insurance to include:

1. Flood insurance with coverage insuring to 80% of replacement cost if the property is located in a 100 year flood plain;

2. Steam boiler and related machinery coverage insuring to 80% of replacement cost when applicable.

(C) Comprehensive General Liability insurance coverage, to include \$1,000,000 per occurrence or \$2,000,000 per occurrence for buildings with elevators.

(D) Other insurance coverage to include Loss of Rents coverage insuring 75% of annual gross rent receipts, and Worker's compensation as required by State law if employees are involved.

(2) The sponsor shall provide to the department prior to disbursement of funds evidence of such insurance coverage in the form of a Certificate of Insurance or binder followed by a certificate within 30 days.

(3) All policies must include the department, its officers, agents, and employees, named as additional insureds.

(4) The policies must include a cancellation clause notifying the department 30 days prior to cancellation of the insurance policy.

(5) The department may approve alternate amounts of coverage based on the size of the project and scope of work to be performed.

§7687. Application Process.

(a) The department shall issue a Notice of Funding Availability (NOFA) which specifies the amount of funds available, application requirements, the allocation of rating points, and the general terms and conditions of funding commitments. Applications in response to each NOFA will be accepted on a continuous basis.

(b) Within 30 days of the receipt of an application, the department shall provide the applicant with written notice whether the application is complete pursuant to section 7688(c). If the application is not complete, the notice shall specify the information or documentation necessary to complete the application.

(c) Applications shall be ranked at least quarterly.

(d) The department shall process a complete application within 60 days.

(1) Within 30 days of the determination by the department that an application is complete, the department shall provide the applicant with written notice whether the application has qualified for ranking pursuant to section 7689(c). If the application does not qualify for ranking, the notice shall provide an explanation of the rating and of the reasons for disqualification.

(2) Within 30 days of providing notice that an application qualifies pursuant to section 7689(c), the department shall provide the applicant with written notice whether an application qualifies for funding pursuant to section 7689(d). If an application does not qualify for funding, the notice shall include an explanation of the ranking and the reasons for the disqualification.

(e) Projects selected for funding shall be approved at loan amounts, terms, and conditions specified by the department.

(f) The department shall allocate not less than 20 percent of the monies from the fund to projects located in rural areas. If necessary, the department may do the following:

(1) issue a special NOFA for rural projects;

(2) award bonus points to rural projects;

(3) reserve a portion of funds specified in the NOFA for rural projects.

(g) The department's minimum, median, and maximum times for processing an application, from the receipt of the initial application to the final funding decision are as follows:

minimum: 60 days

median: 120 days

maximum: 180 days

§7688. Application Requirements.

(a) Application shall be made on form HCD 779, "Rental Loan Application, California Housing Rehabilitation Program (CHRP)," dated 12/89, as set forth in subsection (b). This form is provided by the department.

(b) HCD 779, "Rental Loan Application, California Housing Rehabilitation Program (CHRP)," 12/89:

[application form inserted here in regulations]

§7689. Project Selection.

(a) Projects shall not be considered for funding unless the application demonstrates that all of the following conditions exist:

(1) The applicant is an eligible sponsor pursuant to section 7673;

(2) The project is eligible pursuant to section 7672;

(3) All proposed uses of program funds are eligible pursuant to section 7674;

(4) The application is complete pursuant to section 7688;

(5) The requested loan amount per unit is consistent with the maximum loan amounts authorized pursuant to section 7677;

(6) The estimated loan-to-value ratio is consistent with the requirements of section 7679(a).

(b) Subject to the availability of funds, projects that are considered for funding will be rated according to subdivision (c) and ranked pursuant to subdivision (d).

(c) When the application meets the requirements of subdivision (a), the application shall be rated according to the following criteria. The application must receive a minimum of 60 percent of the total possible points in order to be ranked pursuant to subdivision (d); and zero points in either criterion (1) or (2) will disqualify the application. If either criterion (4) or (5) is not applicable to the proposed project, the total number of points possible will be reduced by the total number of points possible in that criterion; and 60 percent will be calculated on the reduced maximum possible points:

(1) The application demonstrates that the proposed project will maintain fiscal integrity and affordable rents throughout the term of the loan. (30 points)

(2) The applicant demonstrates ability or experience in owning, rehabilitating, and operating rental housing, as evidenced by the length and quality of the sponsor's experience and qualifications; the experience and qualifications of individual members of its board, its staff, or consultants. (25 points)

(3) The proposed project site is free from severe adverse environmental conditions and is accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the project tenants. (15 points)

(4) If applicable, the application contains a relocation plan that minimizes unnecessary cost and extent of relocation. (10 points)

(5) In proposed projects targeting households in need of any direct or supportive tenant services, the proposed project provides those services suitable to the needs of the tenants. (10 points)

(6) A majority of project costs will be for the correction of health and safety defects. (10 points)

Maximum possible points: 100

(d) Where the application meets the requirements of subdivision (c), the proposed project will be ranked to determine its compliance with the following priority requirements. The application must receive a minimum of 60 percent of the total possible priority points in order to qualify for funding. If criterion (2) is not applicable to the proposed project, the total number of points possible will be reduced by the number of points in that criterion; and the 60 percent will be calculated on the reduced maximum possible points. The maximum score for each of the following six criteria is 15:

(1) Percentage of total residential units in the proposed project reserved as assisted for occupancy by very low-income households.

(2) Percentage of total residential units in the proposed project which are assisted units with three or more bedrooms (not applicable to residential hotels, motels, group homes, congregate homes, and rental housing developments occupied by the handicapped).

(3) Need in the area of the proposed project as approved by the department for the type of housing provided by the proposed project, as indicated in the local housing element and other supporting documentation by the following:

(A) Low vacancy rate for rental housing as provided by the department through the use of a methodology which ensures uniform rate calculations for all applications.

(B) Low vacancy rate in developments comparable to proposed project.

(C) Typical local market-rate rents as a high percentage of area median income.

(D) Typical comparable market-rate rents as a high percentage of area median income.

(E) Length of subsidized housing waiting lists for comparable projects and length of wait for households on these lists.

(F) High percentage of substandard rental units in the area of the proposed project.

(G) Degree to which local subsidized housing stock serving lower income households has been threatened or lost because of demolition, foreclosure, or subsidy termination.

(4) The extent to which the proposed project complements the implementation of an existing housing program in the local agency in which the proposed project is located, as demonstrated by one of the following. Points shall be allocated based upon the following criteria which are listed in descending order of priority:

(A) The local agency has a housing element in substantive compliance with the requirements of law. For the purposes of this subsection, "substantive compliance" is demonstrated by a letter from the department which sets forth findings that the housing element adopted within the timeframes required by section 65588 of the Government Code includes that substance essential to every requirement of article 10.6, commencing with section 65580, of chapter 3 of division 1, of Title 7 of the Government Code. The element identifies the special housing needs which would be served by the applicant's proposed project and the local agency is providing financial or nonfinancial assistance to the applicant's project.

(B) The local agency has a housing element in procedural compliance with the law or has an adopted plan or policy for addressing the local housing needs. For the purposes of this subsection, "procedural compliance" means that the local agency has complied with all procedures required by law for the department's review of a draft housing element, local adoption of the element, and submission of the adopted element to the department. The local agency has a program which is providing financial or nonfinancial assistance to the applicant's proposed project.

(C) The local agency has a housing element in procedural compliance with the law or has an adopted plan or policy for addressing the local housing needs. There are programs available in

the jurisdiction of the local agency in support of lower income housing programs and the programs are providing financial or nonfinancial assistance to the proposed project.

(D) The local agency has a housing element in procedural compliance with the law or has an adopted plan or policy for addressing the local housing needs. The local agency has a program which could provide financial or nonfinancial assistance to the proposed project, but which will not provide such assistance.

(E) The local agency has no housing element in compliance but has programs in support of lower income housing and is providing financial or nonfinancial assistance to the applicant's proposed project.

(F) The local agency has no housing element in compliance but has programs in support of lower income housing which could provide financial assistance to the applicant's proposed project.

(G) The local agency has programs in support of lower income housing but there is no assistance available for the applicant's proposed project.

(5) To the extent feasible, the proposed project uses available and cost-effective private, local and other funding sources in lieu of program funds.

(6) The proposed project maximizes long-term benefit for lower income households, as indicated by the following:

(A) Period of time beyond minimum term required by section 7676 that assisted units in the proposed project will be subject to rent and occupancy restrictions similar to program restrictions.

(B) The percentage that rents for assisted units in the proposed project are below the program maximum rents for these units.

Maximum possible points: 90

(e) Projects which receive 60 percent of the available points shall be recommended for funding to the director of the department. The director shall reject a recommendation for funding if it is determined that the rehabilitation work is insignificant relative to total project costs or that the project is inconsistent with the purposes of the program.

§7690. Legal Documents.

(a) The department shall enter into a Standard Agreement with the sponsor which shall encumber monies from the fund in an amount sufficient to fund the approved loan amount. The Standard Agreement shall contain the following:

(1) A description of the approved project and the permitted uses of program funds;

(2) provisions governing the amount and terms of the loan;

(3) provisions regarding the regulatory restrictions to be applied to the project through the Regulatory Agreement;

(4) provisions governing the rehabilitation work and, as applicable, the acquisition or refinancing, and the disbursement of loan proceeds;

(5) special conditions imposed as part of department approval of the project;

(6) requirements for the execution and, where appropriate, the recordation of the agreements and documents required under the program;

(7) terms and conditions required by federal or state law;

(8) requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of loan proceeds;

(9) remedies available to the department in the event of a violation, breach, or default of the Standard Agreement to ensure compliance with program requirements for the full term of the Regulatory Agreement, including repayment of all costs of enforcement; and

(10) other provisions necessary to ensure compliance with the requirements of this program.

(b) The department shall enter into a Rehabilitation Loan Agreement with the sponsor which shall be executed prior to the disbursement of funds to the sponsor, govern the performance of the project, and include the following:

(1) The approved schedule of the project, including transfer of ownership, if any, commencement and completion of rehabilitation work, and occupancy by eligible households;

(2) provisions ensuring that the construction contract is consistent with section 7686 and other program requirements and that all financing agreements are consistent with program requirements;

(3) the approved budget for rehabilitation work and acquisition and refinancing, if applicable;

(4) provisions relating to fund disbursement;

(5) provisions relating to acquisition or refinancing agreements, preparation of rehabilitation specifications, bidding, awards to contractors, and disbursement of funds to contractors, or others;

(6) requirements for reporting to the department;

(7) terms and conditions for the inspection and monitoring of the project in order to verify compliance with the Standard Agreement and this agreement;

(8) provisions regarding tenant relocation;

(9) bonding and insurance requirements consistent with the requirements of this subchapter;

(10) conditions constituting breach of the Rehabilitation Loan Agreement and remedies available to the parties thereto, including repayment of costs of enforcement.

(11) other provisions necessary to ensure compliance with the requirements of this program.

(c) The department shall enter into a Regulatory Agreement with the sponsor for not less than the original term of the loan which shall be recorded against the project property prior to the disbursement of funds. The Regulatory Agreement shall include the following:

(1) designation of assisted units;

(2) standards for tenant selection pursuant to section 7682(a);

(3) provisions regulating the terms of the rental agreement pursuant to section 7682(b);

(4) provisions related to an annual budget approved by the department pursuant to section 7696;

(5) provisions related to a management plan pursuant to section 7694;

(6) provisions related to a rent schedule, including initial rent levels for assisted and non-assisted units pursuant to section 7683(a);

(7) conditions and procedures for permitting rent increases pursuant to section 7683(b);

(8) provisions for limitations on profit pursuant to section 7684;

(9) provision requiring annual reports, inspections and audits pursuant to section 7695;

(10) provisions regarding the withdrawal of funds from a reserve account and additional payments by the department;

(11) assurances that sponsor will maintain the rental housing development in a safe and sanitary condition in compliance with state and local housing codes and the management plan pursuant to section 7694;

(12) conditions constituting breach of the Regulatory Agreement and remedies available to the parties thereto;

(13) provisions governing use and operation of unassisted units and common areas to the extent necessary to ensure compliance with program requirements;

(14) provisions authorizing enforcement of program requirements by tenants;

(15) special conditions of loan approval imposed by the department;

(16) provisions specifying that the Regulatory Agreement shall be binding on all assigns and successors in interest of the sponsor and that all sales, transfers, and encumbrances shall be subject to section 7692; and

(17) other provisions necessary to assure compliance with the requirements of the program.

(d) All loans shall be evidenced by a promissory note payable to the department in the principal amount of the loan and stating the terms of the loan consistent with the requirements of the program. The note shall be secured by a deed of trust on the project property naming the department as beneficiary or by other security acceptable to the department; this deed of trust or other security shall secure the department's financial interest in the project and the performance of sponsor's program obligations.

§7691. Disbursement of Loan Funds.

(a) The sponsor shall request funds from the department for actual expenditures in accordance with the schedule and the authorized amounts in the approved project budget in the Rehabilitation Loan Agreement. The information on any request for funds shall be subject to verification by the department. Requests shall be made on form HCD 780, "California Housing Rehabilitation Program-Rental Component, Request For Funds," dated 12/89, as set forth in subsection (b). This form is provided by the department.

(b) Text of form HCD 780, "California Housing Rehabilitation Program--Rental Component, Request for Funds," dated 12/89:

[form inserted here in regulations]

§7692. Sales, Transfers, and Encumbrances.

(a) A sponsor shall not sell, assign, transfer, or convey the rental housing development, or any interest therein or portion thereof, without the express prior written approval of the department. A sale, transfer or conveyance shall be approved only if all of the following requirements are met:

(1) the existing sponsor is in compliance with the Regulatory Agreement or the sale, transfer or conveyance will result in the cure of any existing violations;

(2) the successor-in-interest to the sponsor agrees to assume all obligations of the existing sponsor pursuant to the Regulatory Agreement and this program;

(3) the successor-in-interest is an eligible sponsor and demonstrates to the department's satisfaction that it can successfully own and operate the rental housing development and comply with all program requirements; and

(4) no terms of the sale, transfer, or conveyance jeopardize either the department's security or the successor's ability to comply with all program requirements.

(b) The Department may grant its approval of such sale, assignment, transfer, or conveyance subject to such terms and conditions as may be necessary to preserve or establish the fiscal integrity of the project. Such conditions may include:

(1) the deposit of sales proceeds, or a portion thereof, to maintain required reserves, or to offset negative cash flow;

(2) the recapture of syndication proceeds or other funds in accordance with special conditions included in the Standard Agreement or any other agreement executed by the sponsor;

(3) such conditions as may be necessary to ensure compliance with the program requirements.

(c) The sponsor shall not encumber, pledge, or hypothecate the rental housing development, or any interest therein or portion thereof, or allow any lien, charge, or assessment against the rental housing development without the prior written approval of the department. The department may permit refinancing of existing liens or additional financing secured by the rental housing development to the extent necessary to maintain or improve the fiscal integrity of the project or to maintain affordable rents.

§7693. Defaults and Loan Cancellations.

(a) In the event of a breach or violation by the sponsor of any of the provisions of the Regulatory Agreement, the Standard Agreement, the Rehabilitation Loan Agreement, the promissory note, or the deed of trust, or any other agreement pertaining to the project, the department may give written notice to the sponsor to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the department within the specified time period, the department, at its option, may declare a default under the relevant document and may seek legal remedies for the default including the following:

(1) The department may accelerate all amounts, including outstanding principal and interest, due under the loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amount in full, the department may proceed with a foreclosure in accordance with the provisions of the deed of trust and state law regarding foreclosures.

(2) The department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to complete the project or operate the rental housing development in accordance with program requirements.

(3) The department may seek such other remedies as may be available under the relevant agreement or any law.

(b) In the event that the breach or violation involves charging tenants rent or other charges in excess of those permitted under the Regulatory Agreement, the department may demand the return of such excess rents or other charges to the affected households. In any action to enforce the provisions of the Regulatory Agreement, the department may seek as additional remedy, the repayment of such overcharges.

(c) Loan commitments may be cancelled by the department under any of the following conditions:

- (1) the objectives and requirements of the program cannot be met;
- (2) implementation cannot proceed in a timely fashion in accordance with the approved plans and schedules;
- (3) special conditions have not been fulfilled within required time periods;
- (4) the rehabilitation work has not commenced within one year of the date of loan approval;
- (5) there has been a material change in the principals or management of the sponsor or project, which was not approved by the department.

The department, in writing and upon demonstration by the sponsor of good cause, may extend the date for compliance with any of the conditions in this subdivision.

(d) Upon receipt of a notice of intent to cancel the loan from the department, the sponsor shall have the right to appeal to the Director.

(e) The department may use amounts available in the fund pursuant to section 7697(b) for the purpose of curing, or avoiding, a sponsor's defaults on the terms of any loan or other obligation which jeopardize completion of rehabilitation, the fiscal integrity of a project or the department's security in the project. Such defaults include defaults or impending defaults in payments on mortgages, failures to pay taxes, or failures to maintain insurance or required operating reserves. The payment or advance of funds by the department pursuant to this subdivision shall be solely within the discretion of the department and no sponsor shall be entitled to or have any right to payment of these funds. All funds so advanced shall be part of the deferred payment loan to the sponsor and, upon demand, due and payable to the department. Where it becomes necessary to use the fund for the purpose of assisting a project to avoid threatened defaults or foreclosures, the department shall take those actions necessary, including but not limited to, foreclosure or forced

sale of the project property, to prevent similar occurrences and insure compliance with the terms of the applicable agreements.

§7694. Management and Maintenance.

(a) The sponsor shall be responsible for all management functions of the rental housing development including selection of the tenants, annual recertification of household income and size, evictions, and collection of rent.

(b) The sponsor is responsible for all repair and maintenance functions of the rental housing development, including ordinary maintenance and replacement of capital items. The sponsor shall maintain residential units, nonresidential space and common areas in accordance with local health, building, and housing codes and the management plan.

(c) The sponsor, with the prior approval of the department, may contract with a management agent for the performance of the services or duties required in subdivision (a) and (b). However, such an arrangement does not relieve the sponsor of responsibility for proper performance of these duties. Such contract shall contain a provision allowing the sponsor to terminate the contract upon thirty days' notice. The sponsor shall terminate said contract as directed by the department upon determination that management does not comply with program requirements.

(d) The sponsor shall develop a management plan subject to department approval prior to loan closing. The plan shall be consistent with this subchapter and shall include the following:

- (1) the role and responsibility of the sponsor and its delegation of authority, if any, to the managing agent;
- (2) personnel policy and staffing arrangements;
- (3) plans and procedures for publicizing and achieving early and continued occupancy;
- (4) procedures for determining tenant eligibility and for certifying and annually recertifying household income and size;
- (5) plans for carrying out an effective maintenance and repair program;
- (6) rent collection policies and procedures;
- (7) program for maintaining adequate accounting records and handling necessary forms and vouchers;
- (8) plans for tenant-management relations;
- (9) management agreement, if any;
- (10) description of direct or supportive tenant services, if any; and

(11) provisions for periodic update of management plan.

§7695. Reporting and Inspections.

(a) No later than 60 days after the end of each fiscal year, the sponsor shall report to the department on form HCD 781, "California Housing Rehabilitation Program Rental Component, Annual Report," dated 12/89, as set forth in subsection (b). This form is provided by the department.

[Annual Report form inserted here in regulations]

§7696. Operating Budget.

(a) Prior to loan closing, the sponsor shall provide the department an initial operating budget for its approval. Such budget shall show all anticipated income and expenses for management, operations, and maintenance for the first year and the projected debt service coverage ratio.

(b) Sixty days prior to the end of each fiscal year, the sponsor shall submit to the department a proposed operating budget for its approval. The proposed operating budget shall set forth the sponsor's estimate of the project's operating income, operating expenses, debt service for the upcoming year, and any proposed rent increases pursuant to section 7683.

(c) The initial operating budget and subsequent proposed operating budgets shall include:

(1) annual deposits to a replacement reserve account for capital improvements such as replacing structural elements, furniture, fixtures, or equipment of the rental housing development which are reasonably required to preserve the project; and

(2) an operating reserve account in an amount sufficient to offset operating shortfalls.

§7697. Residual Receipts Account.

(a) The department shall establish a residual receipts account in the fund. Two percent of any allocation made to the fund shall be deposited into the account. Excess funds returned to the department pursuant to section 7684(f) shall be deposited into the account to replace the allocated funds in the account on a dollar for dollar basis. Funds so replaced shall remain in the fund available for loans pursuant to this subchapter.

(b) The department shall maintain a reserve in the account in an amount equal to two percent of all allocations to the fund for the purpose of avoiding or curing defaults pursuant to section 7693(e).

(c) When funds in the account exceed the two percent default reserve required pursuant to subdivision (b), the department may advance funds from the account for the following:

(1) payment of the cost of unforeseen capital improvements necessary to preserve fiscal integrity and maintain affordable rents; and

(2) reduction of rents of assisted units.

(d) All funds advanced pursuant to subdivision (c) shall be part of the deferred payment loan to the sponsor and subject to the same interest rate and terms of repayment.

§7700-7714.5. [repealed 08/13/82]

1. Repealer filed 8-13-82; effective thirtieth day thereafter (Register 85, No. 33). For prior history, see Registers 84, No. 40; 83, No. 1; 82, No. 25; 82, No. 17; and 82, No. 2.