

REGULATIONS

Rental Housing  
Construction  
Program

*Eugenia*  
CALIFORNIA DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT

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RENTAL HOUSING CONSTRUCTION PROGRAM  
REGULATIONS

Revised  
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ORDER OF ADOPTION OF PROPOSED REGULATIONS OF  
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.

1. Adopt subchapter 10, Rental Housing Construction Program, of Chapter 7,  
Part 1, Title 25, to read as follows:

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#### Article 1. General

##### 7800. Scope and Application

(a) These regulations implement and interpret the Rental Housing Construction Program, Sections 50735 through 50770, inclusive, of the Health and Safety Code. They establish procedures for the disbursement of development and subsidy funds and establish policies and procedures for use of these disbursements to provide affordable housing under the Program. They also delegate authority for the initial recommendation of approval, rejection, amendment, and termination of loans or grants, with the exception of emergency loans and loans and grants to the Agency, from the Director of the Department of Housing and Community Development to the Committee referred to in this subchapter.

(b) The program is divided into three main components, designated as

- (1) the sponsor development component,
- (2) the rights of occupancy component, and
- (3) the housing authority component, each of which is financed by the

development payments account. In addition, these are complemented by the annuity fund, the management reserve account, and the feasibility account.

(c) Developments financed by the Agency shall be subject to the requirements of Articles 1, 2, and 6. All other developments shall be subject to the requirements of Articles 1 through 5, inclusive.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737.

##### 7801. Severability

If any provision of this subchapter or the Program, or the application thereof to any person, entity or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the part which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

**7802. Definitions**

The following are definitions governing the Program. They are supplemented by definitions in Subchapter 2 (commencing with Section 6910) of Chapter 6 of Title 25, California Administrative Code.

"Affordable rent" means rent determined by the Department to be affordable, in accordance with Section 7806.

"Agency" means the California Housing Finance Agency.

"Applicant" means a local finance entity or a housing authority seeking assistance from the Program or the Department acting as a local housing authority pursuant to law.

"Assisted unit" means a dwelling unit in a rental housing development or space in a mobilehome park available on a priority basis to or occupied by an eligible household at a rent which is affordable to that household as a result of assistance from the Program.

"Available to or occupied by on a priority basis" with respect to an assisted unit means a dwelling unit occupied by an eligible household or unoccupied and held out for rent on a priority basis to eligible households.

"Below market interest financing" means any of the following:

(1) A long-term loan made by the agency with below-market interest, as defined by Section 50056.

(2) A long-term loan made by a local finance entity at a below-market interest rate no higher than that established from time to time by the Department, provided such rate shall not exceed by more than one-and one-half percent the interest rate on long-term loans, if any, made by the Agency for rental housing development proposals being submitted or processed for Department assistance under this chapter at the same time.

(3) The use of subsidies, assistance, or financing, other than as provided in paragraphs (1) and (2), which reduce rent levels by an amount equivalent to that enabled by long-term loans at the interest rate established for purposes of paragraph (2).

(4) Subsidies, assistance, or financing provided to the sponsor by or through the Agency or local finance entity and which is a loan made at below-market interest by an agency of the federal government.

"Code" means the California Health and Safety Code.

"Committee" means the Rental Housing Construction Program Committee established pursuant to Title 25, California Administrative Code, Section 6902(c).

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

"Development agreement" means a contract between an applicant and a sponsor in accordance with Section 7822 which regulates the construction of the rental housing development.

"Development costs" means the aggregate of all approved costs incurred in connection with construction of a rental housing development or rental unit, as the context requires, including:

- (1) land acquisition, whether by purchase or lease,
- (2) the construction of the rental units and related structures, including the costs of construction financing,
- (3) overhead, including architectural, legal and accounting fees,
- (4) off-site improvements, including sewers, utilities and streets,

- (5) necessary on-site improvements,
- (6) relocation costs,
- (7) long-term financing fees, and
- (8) rent-up and marketing expenses.
- (9) long-term financing costs where recommended by the Committee

pursuant to Section 7842(d)(g).

"Elderly household" means a family in which the head of the household is 60 years of age or older or a single person who is 60 years of age or older except that different age limitation may be utilized if federal funding is utilized and such funding requires a different limitation.

"Eligible household" means a very low-income household or other lower income household, as defined in Sections 6926 and 6928.

"Excess Rents" means the project income attributable to the assisted units in excess of approved operating expense attributable to the assisted units. Project income attributable to the assisted units shall include carrying charges pursuant to Section 7858(g) and (h).

"Fund" means the Rental Housing Construction Fund

"Handicapped household" means:

(1) a single person or a family in which the head of the household is suffering from an orthopedic disability impairing personal mobility or a physical disability affecting the ability to obtain employment, where the family or person requires special care or facilities in the home, or

(2) a single person or a family in which the head of household suffers from a developmental disability specified in Section 38010(a) of the 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.

"Interagency operating agreement" means the contract between the Department and the Agency pursuant to Article 6 which regulates the relationship between the Department and the Agency.

"Local finance entity" means a redevelopment agency, local housing authority, city, county, city and county, or duly constituted governing body of an Indian rancheria, or any combination thereof, which proposes to provide or use below market interest financing or an equivalent subsidy for a rental housing development.

"Program" means the Rental Housing Construction Program and Chapter 9 (commencing with Section 50735) of Part 2 of Division 31 of the Health and Safety Code, and regulations promulgated thereunder.

"Regulatory agreement" means a contract between the Agency or a responsible agency and a sponsor in accordance with Section 7822 which, establishes the respective rights and duties of the parties with respect to the development and payment therefor.

"Rental housing development" means five or more rental dwelling units, including mobilehomes, on one or more sites assisted or sought to be assisted under the Program. "Rental housing development" also includes five or more mobilehome park spaces. For purposes of the Program, a stock cooperative or limited equity housing cooperative is a rental housing development.

"Responsible agency" means the local finance entity under the sponsor development component, the local housing authority under the rights of occupancy component, or the Department under the housing authority development component. It includes the Department where the Department has contracted with a local finance entity pursuant to Section 50750 of the Code.

"Rural area" means any open country or any place, town, village, or city which by itself and taken together with any other places, towns, villages, or cities that it is part of or associated with:

- (1) has a population not exceeding 10,000 or
- (2) has a population not exceeding 20,000 and is contained within a nonmetropolitan area.

"Rural area" also includes any open country, place, town, village, or city located within a Standard Metropolitan Statistical Area if the population thereof does not exceed 20,000 and the area is not part of, or associated with, an urban area and is rural in character.

"Site control" includes actual ownership of a site, the right to purchase a site under a contract to purchase or option agreement, or such other control of the ownership or possession of a site as the Department considers satisfactory.

"Sponsor" means any individual, joint venture, partnership, limited partnership, trust, corporation, cooperative, local public entity, duly constituted governing body of an Indian rancheria, or other legal entity, or any combination thereof, certified pursuant to Section 7812 as qualified to own and manage or construct a rental housing development. A sponsor may be organized for profit or limited profit or be nonprofit.

"State contract" means the contract between the Department and an applicant in accordance with Section 7822 which regulates the conduct of those entities.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50735, 50737.

#### 7804. Priorities

Priorities for allocation of Program funds for applicants shall be in accordance with the Department's guidelines for a rating system, and for the Agency, in accordance with the explanation by the Agency consistent with the requirements of this subchapter, which will give priority to housing developments which:

- (a) are of the lowest cost possible, given Program requirements and local market conditions,
- (b) incorporate innovative or energy-efficient design and construction techniques and higher densities, where such techniques and densities result in lower costs without reducing the quality of the housing,
- (c) complement the implementation of a local housing program intended to increase the housing supply for persons and families of low or moderate income,
- (d) have been subsidized beyond minimum requirements by
  - (1) funds, services or land contributed or received by the sponsor, or in the case of the housing authority development component by the local housing authority, or
  - (2) an allocation of Community Development Block Grant funds for eligible expenditures including but not limited to rent subsidies, site acquisition, development costs and construction costs,
- (e) use available funds in the most efficient manner to produce the maximum number of housing units, and
- (f) are located within existing public transit corridors as defined in Section 50093.5 of the Health and Safety Code, to the extent feasible and consistent with the other priorities contained in this section. This priority shall not apply to rental housing developments located in rural areas.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

7806. Calculation of Affordable Rents

(a) For the purposes of the Program, rent for the assisted units shall include all regular charges paid to a sponsor or local housing authority by an eligible household for the use and occupancy of an assisted unit in a rental housing development.

(b) Rent payable for assisted units occupied by very low income households shall be deemed affordable for the purposes of the Program if, including an allowance for utility costs, it does not exceed the greater of:

(1) A "base rent" of twenty-five percent (25%) of the amount payable to specific household sizes pursuant to Section 11453 of the Welfare and Institutions Code, as adjusted annually pursuant to Section 11453 of the Welfare and Institutions Code, and the size of the unit, as set forth below

1-BR Unit	-	2 person household
2-BR Unit	-	2 person household
3-BR Unit	-	4 person household
4-BR Unit	-	6 person household
5 BR Unit	-	8 person household

or, if higher,

(2) twenty five percent (25%) of the income of such household.

(c) Rent payable for assisted units occupied by other lower income households shall be deemed affordable for the purposes of the Program if, including an allowance for utility costs, it does not exceed the greater of:

(1) a "base rent" of twenty five percent (25%) of fifty percent (50%) of the area median income adjusted for family size of the geographical area in which the rental housing development is located, or, if higher,

(2) twenty five percent (25%) of the income of such household.

(d) For the purposes of this section, "utilities" include garbage collection, sewer, water, gas, electricity and other heating, cooling or refrigeration fuels which are billed separately from the rent but do not include the cost of telephone service.

(e) The allowance for utility costs shall be calculated as follows: An estimate of utility usage and costs will be prepared for each assisted unit. Such estimate will be based on a reasonable use of utilities by a typical household and will take into account the size and energy efficiency of each unit, and the cost of such utilities then current with respect to the development, considering any subsidies to which the typical eligible household may be entitled. This estimate shall be the allowance for determination of affordable rent pursuant to subdivisions (b) and (c) for the first year of occupancy of the assisted unit. This estimate shall be reviewed annually, taking into account changes in utility costs, and the allowance for utility costs after approval by the Agency or responsible agency shall be adjusted accordingly and implemented pursuant to Sections 7864 and 7888.

(f) Notwithstanding any provision of this section, an eligible household shall not be entitled to receive any payment or "negative rent" if its allowance for utilities exceeds the amount specified in subdivisions (b)(1) or (b)(2) or (c)(1) or (c)(2).

(g) Notwithstanding any other provision of this Section, where assisted units are receiving subsidies under Section 8 of Title II of the Housing and Community Development Act of 1974 as amended, then the rents payable by tenants of such assisted units pursuant to the rules and regulations governing

the Section 8 Program shall be deemed affordable for the purpose of this Program.

(h) Where the responsible agency or the Agency is authorized to fix and alter a schedule of rents necessary to provide residents of non-assisted units with affordable rents, to the extent consistent with the maintenance of the financial integrity of the rental housing development, the affordable rents, if any, will be determined by the responsible agency or the Agency on a case-by-case basis consistent with the calculation of rental income necessary to ensure the financial feasibility of the particular rental housing development.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference Cited: Health and Safety Code Sections 50749, 50759

#### 7808. Component Accounts

(a) The Fund is to be allocated to four component accounts, the Development Payments Account, the Annuity Fund Account, the Feasibility Account, and the Management Reserve Account. The Management Reserve Account shall consist of four percent of the amount in the Fund as of January 1, 1980. The Department shall allocate the remainder of the Fund to the remaining Accounts in such a way so as to ensure that the maximum number of assisted units is developed and maintained at affordable rents and not less than 20 percent of the Fund is allocated for annuity fund payments.

(b) The Department may direct the transfer of funds from one account to another consistent with legal requirements.

NOTE: Authority Cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50738, 50740, 50748

### Article 2. Program Requirements

#### 7810. Eligibility of Sponsors

(a) At the time of application for assistance for a proposed rental housing development, the applicant shall certify to the Department that the sponsor of the proposed rental housing development has or will have the capability to construct, or own and manage, such development in accordance with the criteria set out in subdivision (b).

(b) In determining the capability of a sponsor under this section, the Department and Agency or applicant shall take into account at least the following criteria:

- (1) administrative capability,
- (2) the sponsor's previous experience in design, construction and management of multi-family rental housing or the experience in such design, construction and management of staff or consultants employed or to be employed by the sponsor, taking into account the size and complexity of the proposed development,
- (3) financial capability, and
- (4) the possession of sufficient assets or credit to provide adequately for the predevelopment costs of the proposed rental housing development, and contingent expenses.

NOTE: Authority cited: Health and Safety Code Section 50732. Reference cited: Health and Safety Code Section 50745

#### 7812. Eligible Projects

(a) To be eligible for assistance under the sponsor development component, the applicant must be the Agency or a local finance entity and a project must

be a rental housing development with a sponsor and financed with below-market interest rate financing. In the rental housing development, no less than thirty percent (30%) of the units will be assisted units and no less than twenty percent (20%) of the units shall be available on a priority basis to or occupied by very low-income households, including all households with income equal to or less than fifty percent (50%) of the area median income adjusted for family size.

(b) To be eligible for assistance under the rights of occupancy component, a project must be a rental housing development with a sponsor in which a local housing authority will obtain rights of occupancy to at least thirty percent (30%) of the units, and no less than twenty percent (20%) of the units shall be available on a priority basis to or occupied by very low-income households, including all households with incomes equal to or less than fifty percent (50%) of the area median income adjusted for family size.

(c) To be eligible for assistance under the housing authority development component, a project must be a rental housing development:

(1) to be developed, constructed, owned and operated by a local housing authority;

(2) in which all of the units will be available to or occupied by eligible households at affordable rents; and

(3) in which two-thirds of the units will be available on a priority basis to or occupied by very low income households, and one-third available on a priority basis to or occupied by other low income households.

(d) No development shall be eligible for assistance under this subchapter unless construction commenced on or after July 1, 1980. "Construction" for the purposes of this subdivision shall mean on-site improvements including the construction of the rental units and related structures, and excluding demolition, land fill, grading and site improvements intended for public dedication including sewers, utilities, and streets.

(e) No development shall be eligible for assistance under this subchapter unless:

(1) the locality in which the project will be located has an adopted housing element pursuant to Section 65302(c) of the Government Code which the Department has found to be in conformance with Section 65302(c) of the Government Code, or the locality, prior to approval of the project application, has an extension from the Office of Planning and Research pursuant to Government Code, Section 65302.6, to prepare a housing element; or

(2) the Department makes the following findings:

(A) that the proposed housing development has a satisfactory level of compliance with the priorities as set forth in Section 7804; and

(B) that there exists in the region a severe housing shortage for low and moderate income households, and notwithstanding the locality's failure to comply with State housing element requirements, there exists such an overriding need for the particular proposed housing development that state funding is justified.

Where the proposed housing development is a subdivision under the State Subdivision Map Act, the requirements of that Act and Government Code Section 65473.5, shall be met.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50736, 50741, 50745, 50755, 50765

#### 7814. Relocation Assistance

In the event a tenant or owner is displaced because a local government or housing authority acquires property for a development assisted by the Program, the Relocation Guidelines, Title 25, California Administrative Code, Section 6000 et seq., apply to any displacement that results from such acquisition. With respect to any other residential tenants (not owner-occupants) who will be permanently or temporarily relocated due to a development assisted by the Program other than the right of occupancy component, but who are not assisted under the Guidelines, the following requirements will apply.

(a) Such tenants are eligible for relocation assistance and benefits described in this section if they are displaced after approval for financing by a local finance entity or the Agency unless the tenancy is terminated thereafter for good cause as set forth in Section 7860 or they take occupancy after the approval for financing with notice from the sponsor of the approval and potential displacement.

(b) Within a reasonable period of time prior to displacement, each tenant to be permanently relocated will be provided a reasonable choice of suitable replacement housing. "Suitable replacement housing" is:

(1) Decent, safe, and sanitary, and affordable as set forth in Section 7806, and

(2) In a location that is not generally less desirable than the location of the displaced tenant's existing dwelling with respect to public utilities, commercial and public facilities, social and economic characteristics, and the tenant's place of employment (or to sources of employment if the tenant is unemployed but employable).

Each tenant will be reimbursed by the owner for reasonable moving and related expenses as set forth in Section 6090 or may receive, at the discretion of the tenant, a fixed payment as set forth in Section 6098.

(c) A tenant may be required to relocate for a temporary period only if this is necessary to carry out the project and he/she is permitted to occupy a dwelling in the completed development or another assisted development in the area. The temporary relocation may not exceed 12 months in duration in a decent, safe, and sanitary dwelling and the tenant will be reimbursed for actual, reasonable, out-of-pocket expenses including moving costs to and from the temporary housing and any increase in the monthly housing cost (rent and reasonable utilities). If the new dwelling unit is not ready for occupancy within the 12-month period, the tenant will be notified of the earliest anticipated date of occupancy and will have the right to agree to wait until the extended date or to request treatment as being permanently displaced.

(d) All potential displacees will be provided advance written and oral information in a manner which ensures that they understand relocation opportunities and assistance. In addition, appropriate advisory services will be provided to minimize relocation hardships.

(e) No lawful occupant will be required to move from his/her residence without at least 90 days advance written notice of the earliest date by which he/she may be required to move and a 30-day notice prior to the actual date upon which a move is required.

(1) If a tenant is provided but refuses at least three (3) opportunities to move to suitable replacement housing, the sponsor will not be obligated to make further efforts to provide replacement housing.

(2) If affordable replacement housing subject to subdivision (b) cannot be found, the sponsor's obligation under this section may be satisfied by providing the tenant with a lump sum payment equal to 48 times the amount, if any, necessary to reduce the monthly housing cost (rent and

reasonable utilities) of an otherwise suitable replacement unit to an affordable level.

(f) A tenant who believes that this section has been violated may appeal first to the Agency or appropriate responsible agency, if appropriate, and if this appeal does not resolve the issue within a reasonable period of time, may appeal to the Department.

(g) Sponsors are responsible for assuring that payments and services required by this section are provided.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7816. Program Requirements

(a) Except as set forth in Sections 7824 or 7874, no development payment under the sponsor development or housing authority development component shall exceed the lesser of:

(1) one hundred percent (100%) of the development cost of a rental housing development, and

(2) the amount required when considered with below market rate financing to enable the construction of the rental housing development or ensure the economic feasibility of affordable rents for the assisted units.

(b) In addition to other requirements of this subchapter, of all units assisted by the Program:

(1) at least two-thirds shall be made available on a priority basis to or occupied by very low income households, including all households with incomes equal to or less than fifty percent (50%) of the area median income adjusted for family size, and

(2) not less than twenty percent (20%) and not more than thirty percent (30%) shall be available on a priority basis to or occupied by the elderly or handicapped, and

(3) not less than ten percent (10%) shall be accessible to the physically handicapped and such units will be available to or occupied by the handicapped, and

(4) not less than twenty percent (20%) shall be located in a rural area.

(c) Funds sufficient for the construction of forty eight (48) assisted units specially designed for the mentally and developmentally handicapped, and having access to special supportive services provided by an agency other than the Department, will be reserved for rental housing developments incorporating such units. This reservation of funds will terminate one year after the first Committee meeting. In addition to the reservation of funds for handicapped units under this subdivision, the Department sets as a non-binding goal the reservation of sufficient funds for a further forty-eight (48) such handicapped units until one year after the first Committee meeting. All handicapped units assisted under this subdivision shall be counted as units available to the elderly or handicapped for the purposes of subdivision (b)(2). No units assisted under this subdivision shall be counted as accessible to the physically handicapped for the purposes of subdivision (b)(3), whether or not so accessible.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50736, 50747

7818. Assistance Payment Enforcement

(a) If the development assistance payments are made by way of a loan, a deed of trust in favor the Department, or in the case of payments made through the Agency, in favor of the Agency, securing said loan and the conditions of the regulatory agreement shall be executed which shall create a first or second lien on the housing development with respect to which said loan is made and shall be executed and recorded in accordance with existing applicable laws.

(b) If the development assistance payments are made by way of a grant, the regulatory agreement shall provide that failure to operate the development in accordance with the requirements of the Program shall be deemed to be a violation of the regulatory agreement and shall subject the sponsor to the procedure set forth therein.

(c) The provisions of Sections 7870 and 7892, as applicable, shall apply to the deed of trust or regulatory agreement.

(d) Contemporaneously with the execution and recordation of the deed of trust or regulatory agreement, the Agency or local finance entity shall cause to be recorded, or referenced to a recorded document, in the office of the county recorder of the county in which the assisted units are located, the document(s) evidencing the loan or grant and conditions therein. It shall be indexed by the recorder in the Grantor Index to the name of the grantee and in the Grantee Index to the name of the State of California, and shall include a legal description of the assisted property that is the subject of the document(s).

(e) The obligations of the sponsor under the regulatory agreement shall provide the responsible agency with regulatory authority that is separate and distinct from, and is not dependent or conditioned upon, any financial interest or claim that such agency might otherwise have with respect to the sponsor on account of the development assistance payments.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50746, 50755, 50765

Article 3. Development Standards

7820. Eligibility of Local Finance Entities

(a) Before the Department makes a conditional commitment to a local finance entity, it shall certify after receipt and review of an application that such entity has the capability of:

- (1) ensuring the feasibility of the rental housing development,
- (2) monitoring the design and construction of the rental housing development, and
- (3) monitoring the management of the rental housing development for a period of thirty (30) years or the term of the below market interest financing, if any, whichever is greater.

(b) In determining the capability of a local finance entity, the Department shall take into account the following criteria:

- (1) the entity's ability to provide below market interest financing, as evidenced by the market rating and other relevant factors of bonds issued or to be issued by such entity, or the entity's ability to provide other equivalent assistance, and
- (2) administrative capability, as evidenced by the experience of such entity or staff, or consultants employed or to be employed by such entity,

in implementing grant or loan programs for housing rehabilitation or construction and management of government-assisted housing.

(c) A local finance entity may be eligible for assistance under the Program notwithstanding that it cannot meet the criteria for certification under this section, if:

- (1) it is located in a rural area,
- (2) the Department or an entity approved by the Department contracts or proposes to contract with it to ensure that the terms of the regulatory agreement between it and the sponsor are carried out, and
- (3) the legislative body of the local finance entity consents to such a contract.

(d) A housing authority's eligibility shall be certified in the same manner as a local finance entity.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50745, 50750

#### 7822. Contracts and Agreements

(a) All assistance provided by the Department shall be governed by contracts binding all applicants and sponsors in accordance with this section, except that assistance through the Agency shall be governed by an Interagency Agreement pursuant to Article 6, and the Agency's sponsors by Section 7882.

(b) Assistance to local finance entities under the sponsor development component shall be governed by a state contract between the Department and the local finance entity and by a development agreement and a regulatory agreement between the local finance entity and the sponsor.

(c) Assistance to local housing authorities under the rights of occupancy component shall be governed by a state contract between the Department and the local housing authority and by a regulatory agreement between the local housing authority and the sponsor.

(d) Assistance to local housing authorities under the housing authority component shall be governed by a state contract, a development agreement and a regulatory agreement between the Department and the local housing authority. The terms of the contract and the agreements may be incorporated in a single document if the Department so requires.

(e) Provisions and requirements relating to assistance under the annuity trust fund shall be incorporated into the state contract and regulatory agreement governing assistance under the appropriate main component.

(f) Provisions and requirements relating to assistance under the management reserve account and the feasibility account may be incorporated by way of amendment into the state contract and regulatory agreement governing assistance under the appropriate main component.

(g) The Department may require such additional contracts and agreements between the Department, applicants and sponsors as it deems necessary to meet the purposes of the Program.

(h) All state contracts other than the Interagency Operational Agreement and all regulatory agreements shall be recorded or referenced in a recorded document in the office of the county recorder in the county in which the rental housing development to which they relate is located. When so recorded, they shall constitute a lien on the rental housing development in accordance with Section 7818 for the performance of conditions, including the payment of any money, specified therein. Recorded state contracts shall be indexed in the grantor index to the name of the sponsor and in the grantee index to the State of California. Recorded regulatory agreements shall be indexed in the

grantor index to the name of the sponsor and in the grantee index to the name of the applicant.

(1) All state contracts and regulatory or development agreements shall contain such provisions as the Department considers necessary to meet the purposes of the Program, including but not limited to:

(1) a description of how the assistance under the Program will be used to ensure that each assisted unit will remain available on a priority basis to or occupied by eligible households for a period of not less than thirty (30) years or the term of the below market interest financing, if any, whichever is greater,

(2) specification of the amount, manner, terms and timing of payments, including annuity fund payments, by the Department and the applicant under state contracts and regulatory agreements, respectively, so as to ensure the economic feasibility of the rental housing development and to protect the interests of the State,

(3) requirements for reporting in accordance with Section 7850,

(4) a provision that the covenants and conditions of such contracts and agreements shall be binding upon the successors in interest to the parties thereto,

(5) a provision requiring that the local finance entity and sponsor agree to abide by the directives of the Department with respect to excess annuity fund payments and/or excess rent receipts when income from assisted units and/or annuity fund payments are greater than approved operating costs and when, in the Department's judgment, the assisted units can operate with less rent receipts and/or annuity fund payments, and

(6) a provision stating that the Department and the local finance entity, by mutual agreement, may reduce the number of assisted units in a rental housing development only if the annuity fund cannot provide adequate assistance to maintain the development's fiscal integrity. Any such reduction shall be reviewed no less often than annually as to its continued necessity.

(j) State contracts, in addition to provisions required in subdivision (i), shall contain provisions which:

(1) require the Department's approval of regulatory agreements and development agreements, or any amendments thereto, before such agreements or amendments are entered into by the parties thereto,

(2) assign to the Department the responsible agency's right to enforce the regulatory and development agreements in the event of the responsible agency's failure to enforce such agreements, and

(3) govern the use of annuity trust fund payments in accordance with Section 7834.

(k) Regulatory agreements, in addition to provisions required in subdivision (i), shall contain provisions which:

(1) restrict availability and occupancy of assisted units to eligible households, in accordance with this subchapter, for a period of no less than thirty (30) years or the term of the below market interest financing, if any, whichever is greater,

(2) specify the number of non-assisted and assisted units in the rental housing development and the projected rents for those units,

(3) with respect to the assisted units, specify tenant selection and occupancy standards in accordance with this subchapter,

(4) with respect to all units in the rental housing development, specify the terms of occupancy agreements in accordance with this subchapter,

(5) with respect to all units in the rental housing development, specify procedures for increases in rent in accordance with Section 7864,

(6) limit the sponsor's return on investment in accordance with Section 7866,

(7) make the agreement, or any amendment thereto, of no force or effect unless it has been approved by the Department before being entered into by the parties thereto,

(8) with respect to all units in the rental housing development, require for all documents made available or used by occupants, that copies be available in the language(s) commonly spoken by residents of the area,

(9) with respect to the non-assisted units authorize the responsible agency to fix and alter a schedule of rents such as may be necessary to provide residents of the rental housing development with affordable rents to be consistent with the financial integrity of the rental housing development.

(10) with respect to all units in the rental housing development, require an annual budget in accordance with Section 7850.

(11) with respect to the assisted units in the rental housing development, require the return of all excess rents to the Department, and

(12) govern the establishment, procedures for use, and terms for recapture of the occupancy reserve and surplus payment reserve, if any, provided in Subsection 7834(d).

(1) All development agreements shall contain provisions which:

(1) require, pursuant to state or federal law, payment of prevailing wage rates in the construction of a rental housing development,

(2) require, pursuant to state or federal law, the use of affirmative action by hiring by all contractors and subcontractors involved in the construction of a rental housing development,

(3) require, pursuant to state or federal law, such contractors and subcontractors to provide employment and training opportunities for building trades apprentices, and

(4) specify the building and property codes and standards applicable to the rental housing development.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50739, 50745, 50749, 50755, 50756, 50757, 50759, 50766.

#### 7824. Development Standards and Costs

(a) All rental housing developments shall conform to all applicable state and local building codes, zoning ordinances, and general plan requirements. If a locality approves an exception to such ordinances and requirements in order to facilitate construction of a rental housing development, such a development shall be considered to be in compliance with the requirements of this section.

(b) To the maximum extent feasible, the units of a specific size and nature available to assisted and unassisted households in a development shall be alike in size, design and characteristics and such units shall not be segregated.

(c) Amenities in the development generally must be limited to those which are generally provided in conventional housing of modest design in the area. All amenities will be subject to strict scrutiny by the Department. The use of energy-efficient construction techniques or materials, or more durable, high quality materials to control or reduce maintenance, repair, or replacement costs, will not be considered an excess amenity.

(d) The standards of this section shall be utilized by the Department in applying priorities pursuant to Section 7804.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7826. Site Selection Criteria

Proposed project sites must be certified by the applicant as meeting the following criteria:

(a) The site and neighborhood must be suitable for the type of housing proposed.

(b) The site must be free from severe adverse environmental or social conditions, or such conditions must be mitigated when the housing is completed.

(c) The housing must be accessible to employment and to appropriate social, recreational, educational, commercial and health services that are typically found in market-rate residential neighborhoods consisting largely of unassisted housing.

(d) The project must not be built on a site that has occupied residential structures which would be razed or from which residents would be permanently displaced, or has had such structures within the six months prior to application to the applicant.

(e) The project may not be built in an area identified as having special flood hazards unless the project is covered by flood insurance.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50737, 50737.5

### Article 4. Application Procedure and Review

#### 7830. Prerequisites of Applications

(a) Prior to submission of an application to the Department, the sponsor, or the local housing authority in the case of an application under the housing authority development component, shall have site control of the site of the proposed rental housing development.

(b) Where the proposed rental housing development is likely to contain more than fifty (50) assisted units, the applicant shall give the Department advance notice of its proposed application. Such notice shall be given as far in advance of the submission of the application as possible, but generally no less than thirty (30) days before such submission. Such notice shall not constitute a pre-application, but is required to enable the Department to meet its regional and other allocation quotas.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7832. Applications for Development Payment

(a) Pre-applications and final applications by local finance entities and local housing authorities are to be made on the Department's application forms and in accordance with the Request For Proposals and guidelines to be issued

by the Department and shall be submitted in compliance with Department instructions.

(b) Assistance from the development payments account shall be used for the purpose of reducing approved development costs of assisted units so that rents in those units remain affordable to eligible households.

(c) The applicant shall provide all information required by the pre-application form, including but not limited to:

(1) evidence of eligibility of the applicant, including information required for certification under Section 7820,

(2) evidence of eligibility of the project for which the application is made,

(3) evidence of the applicant's and sponsor's compliance with the prerequisites for application in accordance with Section 7830,

(4) evidence of eligibility of the sponsor (including certification of capacity under Section 7810 of these regulations), or evidence of the capability of the local housing authority,

(5) a description of the proposed rental housing development, including the number and sizes of assisted and unassisted units, the number of structures, location, access to amenities, and suitability of site,

(6) a site map indicating the location of the assisted and non-assisted units,

(7) preliminary drawings of the assisted and non-assisted units,

(8) information as to the proposed construction of the rental housing development, including the general contractor's name and experience, if known, method of construction, incorporation of solar and energy efficient design features and systems, and other special features,

(9) information as to the financial aspects of the rental housing development, including the anticipated amount and form of assistance applied for, a general breakdown of development costs, anticipated sources and terms of financing, projected operating expenses, and a statement indicating how assistance under the Program will be used to provide affordable rents to eligible households in assisted units and how the economic integrity of the rental housing development will be maintained,

(10) information as to the planning aspects of the rental housing development, including anticipated or actual compliance with the local general plan and housing element, zoning, and access to utilities,

(11) a market analysis indicating the feasibility of the proposed project in view of existing market factors, including housing demand at comparable rents, area housing needs and income levels, and regional and local vacancy rates,

(12) information qualifying the applicant for consideration under any of the priority factors included in Section 7804,

(13) information as to the projected occupancy of the assisted units (elderly, family, and/or handicapped),

(14) information as to existing structures on the proposed development site, and

(15) any other information which the Department may reasonably require to determine the eligibility or appropriateness of the proposed rental housing development for assistance under the Program.

(d) The applicant shall provide all information required by the final application form, including but not limited to:

(1) a construction timetable and incorporation of prevailing wage, equal opportunity and apprenticeship requirements,

- (2) a set of architectural drawings including location, type and design of energy system and provisions for passive solar design,
  - (3) information as to the sources and terms of financing,
  - (4) information as to access to utilities, services and employment,
- and
- (5) any other information which the Department may reasonably require to determine the eligibility or appropriateness of the rental housing development for assistance under the Program.

(e) The applicant shall provide additional information before loan and grant closing, including:

- (1) a relocation plan, if necessary, including a program for implementation pursuant to Section 7814,
- (2) evidence of compliance or ability to comply with the California Environment Quality Act, and regulations promulgated thereunder, and if applicable, the California Coastal Act and other relevant state laws, and
- (3) any other information which the Department may reasonably require to determine the eligibility or appropriateness of the rental housing development for assistance under the Program.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7834. Applications for Annuity Funds

(a) Application for annuity fund payments shall be made on the Department's application form and provide all required information.

(b) When the Department determines that assistance from the development payments account is insufficient to provide affordable rents to eligible households in assisted units, assistance may be authorized from the annuity fund.

(c) Annuity fund loan and grant closing shall be concurrent with development payment(s) loan and grant closing.

(d) Assistance from the annuity fund shall be used for the purpose of reducing rent levels in assisted units so that rents in those units remain affordable to eligible households. Such assistance shall be used to subsidize approved operating costs of the assisted units. "Operating costs" means reasonable and justifiable costs for the following items:

- (1) management, including a management fee (which includes all indirect and direct costs of collecting rents and any salary or other payment to an on-site manager), advertising, legal, accounting, and telephone;
- (2) operations, including heating and lighting for common areas, water, elevator maintenance, common area maintenance and supplies, garbage and trash removal, payroll and payroll taxes, insurance, janitorial supplies, ground and drives maintenance, exterminating, and office supplies;
- (3) maintenance, including decorating and repairs;
- (4) vacancy reserve;
- (5) replacement reserve; and
- (6) real estate taxes;
- (7) in the case of cooperatives, an occupancy reserve which shall be for the purpose of providing downpayment loans to occupants of assisted units within the cooperative; and
- (8) in the case of cooperatives, a surplus payment reserve which shall be for the purpose of reducing carrying charges to a household which initially occupied an assisted unit within the cooperative and whose income exceeds the income limits established by this Program.

(e) Applications for payments from the annuity fund, in addition to other information required by the Department, shall include:

(1) the anticipated amount of assistance required, based on cost projections provided by the Department, and

(2) a description of how the annuity payments will be used for eligible costs to reduce rents to ensure the affordability of assisted units consistent with the fiscal integrity of the rental housing development.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50738, 50748

7836. Applications For Management Reserve Funds

(a) Applications for management reserve funds shall be made on the Department's application form and provide all required information.

(b) Assistance from the management reserve account is available only to defray unavoidable cost increases in maintenance, taxes, utility or management costs, or charges for common area and services, in order to maintain affordable rents in assisted units. Management reserve funds may be used only to the extent that;

(1) the annuity fund payment projected for the development is insufficient to provide rents that are affordable in the assisted units,

(2) there are insufficient annuity funds or excess rent revenues, and

(3) the sponsor can substantiate that the need for such funds is the result of unexpectedly low rent payments, extraordinary operational expenses, uninsured damages, or other extraordinary or unforeseen expenses approved by the Department.

(c) Applications for assistance from the management reserve account, in addition to other information required by the Department, shall include:

(1) the anticipated amount of assistance required and the basis for the calculation of that amount,

(2) substantiation of the information required by subdivision (b), including the jeopardy to the fiscal integrity of the development,

(3) information as to how the cost increases will result in unaffordable rents in the assisted units, and

(4) what measures the applicant and sponsor have taken to reduce costs and to maintain the fiscal integrity and affordable rents in the future.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50770

7838. Applications For Feasibility Account Funds

(a) Applications for payments from the feasibility account shall be made on the Department's application form and shall provide all required information.

(b) Assistance from the feasibility account shall be available to defray development costs or short-term operational costs of non-assisted units if the Department determines that:

(1) additional payments are necessary to ensure the economic feasibility of the development,

(2) without additional payments the development could not or would not be undertaken, and

(3) sufficient funds are available to make such payments and not more than 10% of the fund would be used for such payments.

(c) Applications for assistance from the feasibility account, in addition to other information required by the Department, shall include:

(1) the anticipated amount of assistance required and the basis for the calculation of that amount, and

(2) substantiation of the information required by subdivision (b).

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50738

#### 7840. Staff Review of Applications

(a) Pre-applications will be reviewed to determine if they are complete, accurate, and generally in compliance with this subchapter. The Committee may establish application dates, prior to and subsequent to which no applications will be accepted for processing.

(b) Program staff shall review all pre-applications to determine their eligibility and the appropriateness of providing assistance from the Fund.

(c) In conducting its review, program staff shall, at a minimum:

(1) certify as to the capability of the local finance entity and the sponsor, if any, in accordance with Sections 7820 and 7812.

(2) determine the priority of the pre-application under Section 7804,

(3) establish compliance with Section 7812(e) and Department's Statewide Housing Plan,

(4) consider the allocation of assisted units throughout the state in accordance with identified housing needs and Section 7816(b), and

(5) review other relevant information to ensure that the application complies with the requirements and intent of the Program.

(d) On the basis of its review of the pre-application, Program staff will submit recommended pre-applications to the Committee for its consideration.

(e) When a pre-application is recommended to the Committee for review, the applicant shall be notified of the recommendation and the date and time of the Committee hearing considering the pre-application. When a pre-application is not recommended to the Committee for review, the applicant shall be notified of the negative recommendation of the pre-application, the reasons therefore, the right to appeal the action to the Committee, and method and timing of such an appeal.

(f) After conditional commitment, the staff shall review the final application to determine compliance with all conditions. Material noncompliance with any condition, lack of progress in fulfilling conditions, and other material facts shall be reported to the Committee.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50737, 50737.5

#### 7842. Committee Review of Applications and Other Matters

(a) The Committee shall be responsible for the review and recommendation of all pre-applications for assistance, the allocations for assistance, the allocation of Program funds between the component accounts established by this subchapter, and such other functions and duties as may be required by the Director.

(b) The Committee shall operate and consist of members as set forth in Subchapter 1 (commencing with Section 6900) of Chapter 6.5 of Part 1 of Title 25, California Administrative Code.

(c) In reviewing any matter under this subchapter, the Committee shall consider the recommendations of Program staff; the application; and written or oral testimony, if any, from the applicant the sponsor, or any other interested person.

(d) In its review, the Committee shall take into account:

- (1) compliance with this subchapter,
- (2) rating with respect to priorities,
- (3) whether the provision of assistance to the sponsor will result in the most effective and efficient use of available funds,
- (4) the geographic distribution of assisted units throughout the state in accordance with identified housing needs,
- (5) the allocation of assistance pursuant to Section 7816(b), whether approval of the costs of permanent financing as development costs will reduce expenses to the Program over the life of the State Contract, and
- (6) whether approval of the costs of permanent financing as development costs will reduce expenses to the Program over the life of the State Contract, and
- (7) such other considerations as are consistent with the terms and objectives of the program.

(e) The Committee shall inform the Director in writing of its recommendation, stating:

- (1) that it recommends for conditional commitment, postponed consideration of, or recommended rejection of the pre-application, or take such other action with respect to other matters as is deemed appropriate,
- (2) the conditions, if any, attached to its recommendation for conditional commitment or other directive or the reasons for its recommendation for rejection or postponement of consideration.

(f) The Committee, in any recommendation of approval of any pre-application, shall specify any terms, conditions, or special requirements which are not present in the pre-application, as well as the form, term, and timing of assistance payments.

(g) The Committee, in reviewing the progress of developments, amendments of any agreements, or other actions permitted by the Program shall consider all relevant and available information prior to making a recommendation to amend, terminate, or otherwise effect an application or development.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7844. Action by the Director and Applicant Request for Reconsideration

(a) The Director shall, within (15) days of the Committee recommendation, inform the applicant in writing of his/her decision stating:

- (1) that the pre-application has been approved for conditional commitment and condition, if any, attached to the commitment.
- (2) that the pre-application has been postponed by the Committee and the date that it will be reconsidered or an explanation of the actions necessary for it to be reconsidered
- (3) that the pre-application has been rejected and the specific reasons for the rejection.

(b) If the applicant is dissatisfied with any action of the Director regarding the disposition of the pre-application, it may within thirty days (30) of the date of the Directors decision, request, in writing, a reconsideration of the decision, stating the items to be reconsidered and fully supporting the grounds for the reconsideration.

(c) With respect to any request for reconsideration pursuant to subdivision (b), the Director shall:

(1) within twenty (20) days of the date of documented receipt of the request hold an open hearing at which the applicant, sponsor, program staff and any interested person may make oral or written submissions as to the action the Department should take, and

(2) within thirty (30) days of the date of documented receipt of the request notify in writing the applicant of the Director's determination of the request.

(d) The Director's determination of the appeal shall be final.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7846. Disbursements

(a) At the time of Department approval of a pre-application, the Department shall reserve a sum of no more than 120% of the amount of assistance approved for a specific development for a period not to exceed one year. The Department shall disburse funds to the local finance entity or housing authority after closing of the loan and execution of the state contract or any amendment thereto, provided that all terms and conditions of the approved application are met, pursuant to the terms of the State contract.

(b) Upon receipt of funds from the Department, the responsible agency shall establish an appropriate project account and, pending further disbursements by the responsible agency, shall invest the funds and remit interest thereon to the Department at the time specified by the state contract. Funds from the account shall not be disbursed for the development except as permitted by this subchapter and the state contract, development contract, or regulatory agreement.

(c) With the written approval of the responsible agency the Department may disburse payments directly to the sponsor or its designee. However, the responsible agency shall ensure that all conditions precedent to such payment are to be met.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

### Article 5. Operations

#### 7850. Reporting

(a) The regulatory agreement between the sponsor and the responsible agency shall contain a requirement that the sponsor report to the responsible agency in a form approved by the Department at least annually.

(b) The state contract between the responsible agency and the Department shall contain a requirement that the responsible agency monitor the rental housing development and report annually to the Department in a form approved by the Department. Each report shall deal separately with each rental housing development for which the responsible agency is responsible and shall be submitted to the Department no later than ninety (90) days after the beginning of each fiscal year established for the rental housing development. The report shall contain such information as the Department may require, including but not limited to:

(1) the fiscal condition of the rental housing development, including an audited financial statement indicating surplus or deficits in operating accounts and the amounts of any fiscal reserves,

(2) the substantial physical defects in the rental housing development, including a description of any major repair or maintenance work undertaken in the reporting year,

(3) the occupancy of the rental housing development indicating

(A) the number and sizes of assisted units available to or occupied by eligible households,

(B) the distribution of incomes of eligible households,

(C) the ethnic groups to which eligible households belong, and

(D) the numbers of eligible very low income and other lower income households on waiting lists for assisted units.

(4) general management performance, including tenant relations and other relevant information.

(c) The state contract between the responsible agency and the Department shall contain a requirement that no later than ninety (90) days before the beginning of each fiscal year established for the rental housing development, the responsible agency shall submit to the Department a proposed budget for each rental housing development for which such agency is responsible. Such budget shall be in a form approved by the Department and shall include information as to projected rents, operating expenses and utility costs for the next fiscal year and carrying charges, including excess rents from the previous fiscal year, and shall be accompanied by a request for use of annuity funds or an application for management reserve or feasibility funds, if such funds are required to maintain the fiscal integrity of the rental housing development.

(d) The responsible agency shall immediately report to the Department any actual or impending default by the Sponsor under the Regulatory Agreement or deed of trust.

(e) Each rental housing development shall operate on a fiscal year determined by the Department and specified in the regulatory agreement.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50743, 50746, 50756, 50766

7852. Contract and Agreement Amendments

(a) The Department may approve an amendment to the state contract to reflect an change in development funds only:

(1) to correct substantial errors by the Department, the Agency, the local finance entity or the local housing authority in the original processing which would otherwise result in serious inequities,

(2) to reflect differing costs which result from new requirements imposed by local government, the Department, the Agency, local finance entities, the local housing authority, or federal agencies which are beyond the control of the owner, which have been approved by the Department, and which could not have been anticipated at the time the state contract was executed, or

(3) to reflect differing costs which result from a change in contractor which is necessary because the original contractor became bankrupt, was terminated by the sponsor due to inadequate performance or abandoned the job.

(b) Amendments pursuant to subdivision (a) will be limited to the amount necessary to cover the specific cost increase associated with the applicable item cited in the request and limited to a pro rata share based on the portion of the difference attributable to the assisted units. The Department shall not authorize a change in funding until such time as the local finance entity or housing authority has approved a proportional adjustment in development costs for the non-assisted units.

(c) Amendments of the state contract and regulatory agreement to increase or decrease the amount of annuity fund payments and/or increase or decrease the number of assisted units shall be fully supported by circumstances requiring the adjustment, including the extent to which the cost changes were within the control of the sponsor. Such amendments shall be considered by the Department concurrently.

(d) Other amendments of the state contract and regulatory agreement to change any terms of the approved application shall be fully supported by circumstances requiring the amendment.

(e) Requests for any amendments permitted by this section shall be submitted to the Department at least three weeks prior to a scheduled meeting of the Committee.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50756, 50759, 50765

#### 7854. Tenant Occupancy Standards

(a) The regulatory agreement between the sponsor and the responsible agency shall require standards for occupancy of assisted units. Included in such standards shall be the requirement that one bedroom units shall be assigned ordinarily to single person households only when there are no efficiency units available.

(b) The general standards for determination of a tenant's unit size are as follows:

<u>Unit Size</u>	<u>Minimum No. of Persons in Household</u>	<u>Maximum No. of Persons in Household</u>
0-BR	1	1
1-BR	1	2
2-BR	2	4
3-BR	4	6
4-BR	6	8
5-BR	8	10

(c) Flexibility for assignment to a different sized unit is permitted if special circumstances warrant such an assignment and its reasons are documented in the tenant's file.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50749, 50757, 50766

#### 7856. Tenant Selection Procedures

The regulatory agreement between the responsible agency and the sponsor shall require the development of tenant selection procedures which shall require at least the following plans and procedures with respect to the selection and admission of households applying to occupy assisted units and which, after approval by the responsible agency, shall form part of the regulatory agreement and be binding on the sponsor while the assistance remains in effect.

(a) An affirmative marketing plan shall be established which must include the following:

(1) Local residency requirements are prohibited. Local residency preferences are discouraged except as required by subdivision (b).

(2) Policies to achieve greater access to housing opportunities created by the Program for all persons regardless of race, sex, marital status, color, religion, national origin, handicap, other arbitrary factors.

(3) In general, all the requirements of the affirmative fair housing marketing plan required by Title 24 Code of Federal Regulations Section 883.315 and the Affirmative Fair Housing Marketing Regulations in Title 24 Code of Federal Regulations Section 200.600 et seq., whether or not federal assistance is received.

(b) A tenant preference plan shall detail the manner in which the housing sponsor will give preference in the renting of units:

(1) To tenants displaced from housing by this or other government-assisted housing developments or by other governmental actions or natural disasters.

(2) To families with dependent children for multi-bedroom units.

(c) In the case of cooperatives, the tenant selection plan and procedures shall specify the selection criteria for membership, grounds for determination of unsuitability and procedures for appeal. Selection and suitability criteria shall not discriminate on the basis of race, religion, national origin, language, sex, source of income, handicap, family makeup, or any other arbitrary factor.

(d) The sponsor shall advertise and solicit applications from potential tenants in accordance with the approved marketing and selection plans. Applications shall be in a form approved by the Department and shall be available for examination by the responsible agency.

(e) On receipt of the application, the sponsor shall determine the eligibility and, in the case of cooperatives, the suitability of the household under this subchapter; verify the information supplied by the household in the application; and certify the income of the household for the purpose of determining the rent affordable to such household pursuant to Section 7806.

(f) If the sponsor determines that the potential tenant is eligible and, in the case of cooperatives, suitable, the sponsor shall promptly so notify the potential tenant of eligibility and, based on turnover history, when a unit may be available.

(g) If the sponsor determines that the potential tenant is not eligible or, in the case of cooperatives, unsuitable to occupy an assisted unit, the sponsor shall promptly notify the potential tenant in writing stating the reasons for such determination and the procedure for appeal pursuant to Section 7862.

(h) The sponsor shall compile an initial list of eligible households applying to occupy assisted units. Such a list will indicate whether such households are very low income households or other lower income households and after separating households into preferences pursuant to subdivision (b), shall place households in such groups in an order of priority determined by lot or another method approved by the Department. After initial tenancies, the priority shall be established in order of application, except that tenants entitled to preference shall receive preference over non-preference households.

(i) The sponsor may refuse to place an eligible household on the list required by subdivision (h) or remove such household from such list if the sponsor determines that such household has unreasonably provided false information in its application, or has, in the two years preceding the application, been evicted by a court of law on more than one occasion on grounds which were consistent with Section 7860(b) or, in the case of cooperatives, on the grounds of unsuitability. The sponsor may not use status criteria including but not limited to source of income or marital status in determining eligibility. A potential tenant refused a rental unit or a place on a waiting list shall be notified in writing stating the reasons for such

determination and the procedure for appeal of this decision pursuant to Section 7862.

(j) As assisted units become available, the sponsor shall offer them for occupancy by eligible households in accordance with the application date and with the requirement for occupancy by different income levels pursuant to the provisions of the regulatory agreement.

(k) Notwithstanding the provisions of this section, the Department may permit to be incorporated in a regulatory agreement such other tenant selection and occupancy standards as it considers necessary to ensure the fiscal integrity of the project, to ensure an adequate economic mix of income groups, or to require other reasonable standards where the nature or location of the rental housing development requires such standards.

NOTE: Authority cited: Health and Safety Code Section 50737

Reference: Health and Safety Code Sections 50746, 50749, 50756, 50766

#### 7858. Lease and Occupancy Procedures

(a) Each household selected to occupy a unit in the rental housing development shall enter into a lease with the sponsor of the rental housing development. Such a lease shall be a standard form approved by the Department, including but not limited to the following terms:

(1) a tenancy from year to year, with a provision allowing the tenant to terminate the tenancy on thirty (30) days written notice to the sponsor or, in the case of cooperatives, terms to be approved by the Department,

(2) termination provisions in compliance with Section 7860.

(3) provisions relating to the annual recertification of the income of the tenant in an assisted unit in accordance with this section,

(4) provisions relating to security, cleaning and other deposits in accordance with law, and in the case of cooperatives, the downpayment,

(5) provisions requiring notice of approved rent increases pursuant to Section 7864.

(b) In the case of cooperative ownership, the sponsor shall have provisions for downpayments in accordance with the following:

(1) Downpayments as applicable to very low income households shall not exceed 2.5 percent of the prorated development cost for the unit, plus the equity appreciation at a rate approved by the Department.

(2) The average downpayment applicable to all eligible households shall not exceed 2.5 percent of the prorated development cost for the unit, plus the equity appreciation at a rate approved by the Department.

(3) Downpayments as applicable to other lower income households shall not exceed 3.5 percent of the prorated development cost for the unit, plus the equity appreciation at a rate approved by the Department.

(4) The required cash contribution to be paid by an eligible household toward the downpayment at or before occupancy shall not exceed ten percent (10%) of the household's income over the preceding twelve (12) months.

(5) The cooperative may issue the tenant a loan equal to the difference between the downpayment and the cash contribution. The terms for such loan shall be approved by the Department, but in no case shall the total payments made during the year exceed the greater of ten percent (10%)

of the original loan amount or one month's carrying charge determined at the most recent income recertification.

(c) The sponsor may establish reasonable rules of conduct and occupancy which shall be in writing, and given to each tenant, and effective 30 days after any amendment thereof.

(d) With respect to tenants of assisted units, the tenant's income shall be recertified once each year in accordance with the following procedure:

(1) The sponsor shall notify the tenant in writing thirty (30) days in advance of the impending recertification, requiring the tenant to submit to the sponsor a declaration of income within 30 days in a form approved by the Department; and

(2) The sponsor shall verify the accuracy of the declaration, certify the tenant's income accordingly and notify the tenant in writing of the certification and any resultant changes in the tenant's rent and right to occupy an assisted unit pursuant to subsections e, f, g, and h, and the tenant's right to appeal such determinations pursuant to Section 7862.

(e) Where the tenant in an assisted unit was a very low income household and on recertification the tenant's income exceeds:

(1) fifty percent (50%) of the area median income adjusted for family size but not the upper limit for lower income households, the tenant's rent shall be set no higher than twenty five percent (25%) of the tenant's income including an allowance for utility costs in accordance with Section 7806,

(2) the upper limit for lower income households, the tenant

(A) shall from the date of recertification pay rent equal to twenty five percent (25%) of the tenant's income including an allowance for utilities, and

(B) shall have a right of first refusal where provided for in the regulatory agreement for any appropriate-sized, non-assisted unit in the rental housing development which becomes vacant within six (6) months of the date of recertification or their own unit if an appropriate-sized, non-assisted unit becomes occupied by an eligible household within six months. Where more than one tenant has such a right of first refusal the priority of each tenant's right of refusal shall be determined by lot, and

(C) shall be required to vacate the assisted unit no later than six (6) months from the date of recertification if the tenant's continued residency would cause a reduction in the number of assisted units occupied by eligible households in the development.

(f) Where the tenant in an assisted unit was a lower income household but not a very low income household and on recertification the tenant's income:

(1) falls below fifty-one percent (51%) of the area median income adjusted for family size the tenant shall pay rent pursuant to Section 7806 (c)(1). When a vacancy occurs in an assisted unit in the rental housing development occupied until such vacancy by a household with an income equal to or less than fifty percent (50%) of the area median income adjust for family size, the tenant's rent shall be reduced to the amount set forth in Section 7806(b).

(2) exceeds the upper limit for lower income households, the provisions of subdivision (d)(2) shall apply.

(g) In case of cooperatives where the tenant in an assisted unit was a very low income household and on recertification the tenant's income exceeds:

(1) fifty percent (50%) of the area median income adjusted for family size but not the upper limit for lower income households, the provisions of 7858(e)(1) shall apply.

(2) the upper limit for lower income households but not in excess of the ninety percent (90%) of the area median income adjusted for family size, the tenant shall from the date of recertification pay carrying charges equal to thirty-five percent (35%) of the tenant's income including an allowance for utilities.

(3) ninety percent (90%) of the area median income, adjusted for family size, the tenant:

(A) shall from the date of recertification pay a carrying charge equal to thirty-five percent (35%) of the tenant's income including an allowance for utilities but not to exceed the carrying charges of a nonassisted unit.

(B) shall have a right of first refusal where provided for in the regulatory agreement for any appropriate-sized, nonassisted unit in the cooperative which becomes vacant within twelve months of the date of recertification, or their own unit.

(C) shall after twelve months pay carrying charges equal to the carrying charges for a equivalent nonassisted unit.

(h) In the case of cooperatives where the tenant in an assisted unit was a lower income household and on recertification the tenant's income:

(1) falls below fifty-one percent (51%) of the area median income adjusted for family size, the provisions of Section 7858(f)(1) shall apply.

(2) exceeds the upper limit for lower income households but is less than ninety percent (90%) of the area median adjusted for family size, the provisions of Section 7858(g)(2) shall apply.

(3) exceeds ninety percent (90%) of area median adjusted for family size, the provisions of Section 7858(g)(3) shall apply.

(i) In the case of cooperatives where an existing member occupying an assisted unit exceeds ninety percent of the median income, the next comparable available unit shall be deemed an assisted unit.

(j) Except as specifically set forth in this subchapter, leases and landlord-tenant relationships shall be subject to California law.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50749, 50756, 50762

#### 7860. Termination and Eviction

(a) A tenancy in a unit in a rental housing development may be terminated without the termination being deemed an eviction under the following circumstances:

(1) death of the sole tenant of a unit,

(2) by the tenant at the expiration of a term of occupancy,

(3) by abandonment of the premises by the tenant, or

(4) with respect to a tenant of an assisted unit, by a failure to maintain financial eligibility pursuant to Section 7858, providing the sponsor gives the tenant 60 days written notice of such termination.

Any termination of a tenancy other than those listed in this subdivision shall constitute an "eviction" and shall be effected only pursuant to the remaining provisions of the section.

(b) The sponsor shall not evict any tenant in violation of California law and only upon the following grounds: material noncompliance with the lease, material failure to carry out obligations under state law, or any other good

cause which may include the refusal of a family to accept an approved modified lease. "Material noncompliance with the lease" includes one or more substantial violations of the lease or habitual minor violations of the lease which:

- (1) disrupt the livability of a building,
- (2) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities,
- (3) interfere with the management of the building, or
- (4) have an adverse financial effect on the building. Rent shall be due on the first day of the rental period but will not be late until the sixth day of that period. Non-payment of rent or any other financial obligation under the lease after a three-day notice to pay rent or quit will constitute material noncompliance with the lease, but payment during such a period will constitute a minor violation.

(c) Notice of termination or eviction shall be provided to the tenant pursuant to law, except that such notice shall contain in addition to other required information, a statement of the facts constituting cause for eviction and the right of a tenant to a hearing pursuant to Section 7862 if a request for hearing is provided within the time permitted by the eviction or termination notice. If a hearing is requested within 10 days after service of a three day notice to pay rent or quit, that notice shall not be operative until three days after a final decision is rendered in the hearing. No hearing shall be required if an eviction is noticed pursuant to Section 1161(4) of the Code of Civil Procedure.

(d) The procedure for eviction shall be pursuant to law, except that hearings pursuant to Section 7862 may be interposed upon timely request by the tenant.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50749, 50756, 50767

#### 7862. Appeal and Grievance Procedures

(a) Each sponsor shall submit, together with its affirmative marketing program, proposed appeal and grievance procedures for resolving complaints by the sponsor concerning the sponsor's tenants and by its present or prospective tenants concerning the sponsor or the sponsor's other tenants. The proposed procedures shall be reviewed by and be subject to the approval of the Department, which shall require such modifications as may be necessary and appropriate. The procedures shall include feasible informal and formal mechanisms for dispute resolution as are appropriate given the nature of the housing sponsor, the size and nature of the development, and the characteristics of the tenants (including English language fluency). Where appropriate, the procedure shall provide that unresolved grievances or additional appeals shall be directed to the responsible agency for review and recommendation. The Department shall be the final authority for purpose of interpretation of the requirements of the Program, upon a written request for interpretation.

(b) A written copy of the approved grievance and appeal procedures shall be given to each tenant at the time of admission and thereafter as changes are approved, and to each prospective tenant upon rejection.

(c) Any grievance, including a contractual dispute, of a sponsor with another sponsor or its responsible agency shall be addressed first with the executive officer of that agency. If the matter is not resolved to the satisfaction of the sponsor, it may be addressed in writing to the Director of the Department.

(d) At a minimum, the tenant appeal and grievance procedure must include the following:

(1) Oral or written request for informal hearing within a reasonable time after the basis for appeal or grievance arose;

(2) A prompt informal hearing and written decision to the tenant including the right to a formal hearing;

(3) Oral or written request for a formal hearing within a reasonable time after such a request and before an impartial person jointly selected by the sponsor and tenant. If they cannot agree on such a person, each may appoint a representative who, together, shall appoint a third person who shall comprise the hearing panel.

(4) The hearing be held in a manner to ensure fairness and the provision of basic safeguards of due process after at least three days written notice to the parties. The decision shall be based solely on a preponderance of evidence presented at the hearing.

(5) If the tenant or sponsor fails to appear at the hearing, the hearing officer or panel may, in its discretion, either postpone the matter for no more than five days or make a determination that the absent party waived the right to the hearing.

(6) Within two weeks of the request for the hearing, the hearing officer or panel shall prepare a written decision to be sent to the sponsor, tenant, responsible agency and Department.

(e) If the hearing relates to an eviction or termination, in addition to the requirements of subdivision (d), the procedure must include a requirement that the housing sponsor must first make a showing of "good cause" for eviction and must thereafter sustain the burden of proof as to that issue.

(f) Neither utilization of nor participation in any of the dispute resolution procedures in this section shall constitute a waive of, or affect in any manner whatsoever, any rights the tenant, prospective tenant, or sponsor may have to a trial de novo or judicial review in any judicial proceedings which may thereafter be brought in the matter.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50749, 50756, 50767.

#### 7864. Rent Increase Procedures

(a) With respect to assisted units:

(1) Base rents shall be adjusted within 60 days following adjustment of cost of living increases pursuant to Section 11453 of the Welfare and Institutions Code and publication of new area median incomes by the Department, and utility cost adjustments shall be made pursuant to Section 7806. A 30-day notice of utility allowance or base rent change shall be given to the tenant prior to the effective date of such an increase or decrease.

(2) Following completion of recertification of tenant income, a 30-day notice to the tenant of rent increase or decrease must be given prior to the effective date of such an adjustment.

(3) Prior to any change in the rent, the sponsor shall notify each tenant, in writing, of informal meetings with the sponsor to discuss the rent rate changes.

(b) With respect to non-assisted units the sponsor shall comply with all requirements specified by the responsible agency concerning rent adjustments.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50749, 50759, 50767

7856. Return on Investment

(a) A sponsor which is not a nonprofit corporation or a governmental agency shall be entitled to distribute earnings in an annual amount not to exceed six percent (6%) of the sponsor's actual investment in a rental housing development.

(b) Notwithstanding subdivision (a), the Committee may authorize such sponsor to distribute earnings of an amount greater than six percent (6%) but not to exceed ten percent (10%) on a family rental housing development if it determines:

(1) that without the allowance of such greater rate of return the Department would not be able to comply with the requirements of Section 50736 of the Code, and

(2) that such greater rate of return is reasonable taking into account all the circumstances of the rental housing development.

(c) At a time to be determined by the Department, the responsible agency shall certify to the Department as to the amount of the sponsor's investment on which the allowable return will be calculated. Such amount shall include the sponsor's actual investment in the rental housing development, other than any unaccrued liabilities of the sponsor.

(d) The funds for return on investment may be distributed to owners only at the end of each fiscal year as determined in the regulatory agreement and after all project expenses have been paid, or funds set aside for their payment; all reserve requirements have been met; and excess annuity payments and rents have been recaptured. Any shortfall in return on investment may be made up from surplus project funds in future years.

(e) The provisions of this Section do not apply to sponsor's return on investment under the rights of occupancy component.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50746

7868. Maintenance and Management

(a) With respect to all units in the rental housing development, the sponsor is responsible for all management functions (including selection of tenants, recertification of family incomes, evictions and other terminations of tenants, and collection of rent) and all repair and maintenance functions, including ordinary and extraordinary maintenance and replacement of capital items.

(b) The standard of care under this section shall require that the units and common areas be maintained as required by local health and building or housing codes, that this subchapter be fully complied with, that the security of the State's interest not be endangered, and that the objectives of the Program be met.

(c) With the approval of the responsible agency and the Department, the sponsor may contract with a private or public entity for the performance of the services or duties required in subdivision (a). However, such an arrangement does not relieve the sponsor of responsibility for proper performance of these duties.

(d) The sponsor shall develop a management plan to be approved by the responsible agency and the Department. The plan shall include the following:

(1) The role and responsibility of the sponsor and its delegations of authority to the managing agent.

(2) Personnel policy and staffing arrangements.

(3) Plans and procedures for publicizing and achieving early occupancy.

- (4) Procedures for determining tenant eligibility and for certifying and recertifying incomes.
- (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) Social service programs, if any.
- (10) Management agreement.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50737, 50758

7870. Transfer, Foreclosure, Breach, or Termination of Assistance

(a) If the sponsor intends to sell or convey the rental housing development, express, prior written approval of both the local finance entity and the Department is required and may be given provided that the following terms shall be incorporated:

(1) The successor in interest to the grantor agrees to assume the obligations of the grantor relating to the Program.

(2) The successor in interest is an eligible sponsor and demonstrates that it can successfully own and operate the rental housing development.

(b) If the payment of development assistance is accomplished by way of loan, a deed of trust securing said loan shall provide, among other things, that the responsible agency, upon default in payment or conditions of the loan by the sponsor under the terms of the deed of trust and in the responsible agency's discretion, either may declare all sums secured thereby immediately due and payable by executing and recording or causing to be executed and recorded a notice of default and election of sale or by commencing an appropriate foreclosure action. In addition, upon the occurrence of a default, the responsible agency may, in person, by agent or by receiver appointed by a court enter upon and take possession of the rental housing development, collect all rents, and perform any acts necessary to maintain or operate it, in such a manner as to not cause the default of a superior creditor or the cessation of any other subsidies.

(c) If the payment of development assistance is accomplished by way of grant, the responsible agency, at its discretion, may demand repayment of the grant less an amount equivalent to the value of prior use of the premises or seek enforcement by proceeding at law and/or in equity, at the option of the responsible agency, against any person or persons or entity violating or attempting to violate any covenant or condition of the regulatory agreement.

(d) Prior to taking any action under subdivisions (b) or (c), the responsible agency shall:

(1) provide the sponsor with 30 days written notice of the breach or default, and seek and encourage correction or compliance,

(2) provide the Department 14 days written notice of the breach and then the intention to foreclose, default, or litigate, and

(3) obtain Department approval for the action intended, which approval shall not be unreasonably withheld.

(e) In the event of foreclosure or forced sale, the purchaser shall take title subject to these conditions and limitations.

NOTE: Authority Cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50755, 50765

## Article 6. CHFA Developments

### 7871. Committee Advice and Actions

(a) Excepting subdivision (b) and Section 7878(d), projects processed under the authority of this article shall not be subject to the provisions of Subchapter 1 of Chapter 6.5, commencing with Section 6900. However, the Committee shall be constituted as set forth in Section 6902(c) and may provide advice to the Director with respect to the compliance of the application with program objectives and requirements. The Committee's advice may include a recommendation to approve, approve with conditions, or reject the application.

(b) In addition to the power of review and recommendation set forth in Section 7878(d), the Committee may recommend denial of any action or decision by the Director within 45 days of that decision or at the next Committee meeting at which time the matter can be properly included in the agenda whichever comes first. Such actions or decisions which are properly within the scope of review shall include, but not be limited to:

- (1) the preparation or dissemination of the allocation plan,
- (2) the establishment of the return on investment of any sponsor,
- (3) the terms of commitment or disbursement of funds to the Agency,
- (4) the approval of and amendments to the Interagency Agreement or other agreements with the Agency affecting the operation of the Program.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

### 7872. Site Selection

Proposed development sites must be certified by the Agency as meeting the following criteria:

(a) The site and neighborhood must be suitable for the type of housing proposed.

(b) The site must be free from severe adverse environmental or social conditions, or such conditions must be mitigated when the housing is completed.

(c) The housing must be accessible to employment and to appropriate social, recreational, educational, commercial and health services that are typically found in market-rate residential neighborhoods.

(d) The project must not be built on a site that has occupied residential structures or has had such structures within the six months prior to application to the applicant.

(e) The project may not be built in an area identified as having special flood hazards unless the project is covered by flood insurance.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50737, 50737.5

### 7874. Development Standards and Costs

(a) All rental housing developments shall conform to all State and local building codes, zoning ordinances, and general plan requirements.

(b) A project must not separate, segregate or otherwise physically distinguish assisted units from non-assisted units.

(c) Amenities in the development generally must be limited to those which are generally provided in unassisted housing of modest design in the area. All amenities will be subject to strict scrutiny. The use of energy-efficient construction techniques or materials, or more durable, high quality materials, to control or reduce maintenance, repair, or replacement costs will not be considered an excess amenity.

(d) The standards of this section shall be utilized by the Agency in applying priorities pursuant to Section 7876.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

7876. Interagency Operating Agreement

The Department and the Agency shall enter into an Interagency Operating Agreement which shall specify their respective obligations. The Interagency Operating Agreement shall include, but not be limited to, the following items:

(a) The Department shall establish an allocation plan which shall provide the Department with a mechanism for balancing the Program's requirements while providing flexibility to the Agency to seek to balance its overall production in order to meet its statutory requirements. The plan, prepared at regular intervals by the Department, shall establish allocations for the number, type, geographic distribution and other relevant criteria of assisted units to be submitted to the Department for approval within a specified period.

(b) In accordance with the allocation plan, the Agency shall, on a project-by-project basis, select projects after considering the program priorities and their consistency with other Program requirements and objectives.

(c) The Department and Agency shall specify the means by which the Department may enforce the breach of any Agreement between the Agency and a sponsor.

(d) The Agency and Department shall agree to a method of resolving any differences of opinion as to the requirements, objectives, or intent of the Program.

(e) The Department shall agree to set aside forty percent (40%) of the moneys in the fund as of July 1, 1980, to assist rental housing developments financed by or through the Agency. Such funds shall be approved for expenditure by application approval within two (2) years after promulgation of the initial allocation plan; funds remaining at that time shall become available to local finance entities, housing authorities, or the Agency on an equal basis.

(f) Prior to any disbursement of funds to the Agency, the Agency and Department shall enter into a state contract for each development in accordance with Section 7882. The state contract shall be recorded or referenced in the office of the county recorder as set forth in Section 7882(e).

(g) At the time of Department approval of an application, the Department shall transfer to the Agency a sum equivalent to 120% of the amount of assistance approved for a specific development, or such lesser amount as requested by the Agency. Within one year thereafter unless an extension is granted by the Department, the Agency shall fund the loan for the development; if the loan is not funded within the approved term, the sum and all interest collected thereon shall be transferred to the Department.

(h) Upon receipt of the funds from the Department, the Agency shall establish an appropriate project account and, pending disbursements by the Agency, shall invest the funds in an interest-bearing account or security. Funds from the account shall not be disbursed for the development except as permitted by this subchapter, the Interagency Agreement, and the state contract.

(i) The Agency may apply to the Department for funds not to exceed an amount proportionate to its set-aside from the feasibility account and the management reserve account pursuant to the procedure set forth in Section 7878

except that the application shall contain only that information reasonably required by the Department and relevant to the specific application.

(j) The Agency and Department shall agree that any excess funds returned to or retained by the Agency shall be promptly returned to the Department for deposit in the Agency set-aside.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50739, 50740

7878. Application Procedure

(a) Subject to the Program and the allocation plan, after the Agency has approved a site for a proposed project, it may apply to the Department requesting authority to set-aside moneys to assist the project.

(b) The application shall consist of:

(1) a description of the proposed project including the number and size of assisted units,

(2) a description of the amount and form of assistance requested and an assurance that the assisted units will be made affordable,

(3) a certification that the sponsor is capable of meeting all other responsibilities necessary to develop, construct, market, and manage the project in a manner consistent with the goals and requirements of the Program,

(4) a description of special construction techniques and energy efficiency characteristics, if any,

(5) certifications that the proposed project will be consistent with local planning requirements,

(6) certification that the project will be economically feasible,

(7) a certification that the project complies with the appropriate allocation plan, and

(8) an explanation of the extent to which the proposed project qualifies under the priorities of the Program.

(c) Upon submission of the application to the Department, the Department shall review the application and accept as correct any statement in the application unless the Department has substantial reason to question the completeness of the application or the correctness or completeness of any element in the application. When the Department so questions, it shall promptly notify the Agency, and the Agency may provide additional documentation to the application or in support of any element thereof. When the Agency provides such documentation, the Department will act in accordance with the Agency's judgment or evaluation and may not deny the application unless the Department determines that the application or any element thereof is not complete or is clearly not supported by the facts. If the Agency does not provide additional documentation, the Department shall take its action based upon the information and certifications already provided. In addition to the review set forth in this subdivision, the Department shall determine whether the proposed development complies with the local housing element or extension thereof; such a determination shall be required for approval.

(d) The Agency shall submit each application according to a schedule established by the Department. Within 35 days after each such submission, the Director shall notify the Agency and Committee in writing that the application is:

(1) approved,

(2) approved only if specified deficiencies are corrected and the Department receives amendments to the application necessary to correct the deficiencies within a specified time, or

(3) not approved with a statement of the reasons for disapproval. The Director's decision shall be valid unless within 45 days or at the next Committee meeting at which the matter can be properly included in the agenda whichever occurs first, the Committee reviews and recommends denial of any decision on an application by the Director, excluding appeals. Such a recommendation shall be deemed to be a denial of the application.

(e) If the Agency is dissatisfied with the denial of its application, the reduction of the amount applied for, actions pursuant to Section 7871, or any conditions attached to the approval of its application, it may, within thirty days of the date of the decision, appeal in writing to the Director of the Department, stating and fully supporting the grounds of its appeal.

(f) If the Agency appeals to the Director pursuant to subdivision (e), the Director shall:

(1) within twenty (20) days of the date of documented receipt of the appeal hold an open hearing at which the Agency, sponsor, program staff and any interested person may make oral or written submissions as to the action the department should take with respect to the application, and

(2) within thirty (30) days of the date of documented receipt of the appeal notify in writing the Agency of the Director's determination of the appeal.

The Director's determination of the appeal shall be final.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50737, 50745

#### 7880. Financing

(a) Projects assisted pursuant to the Interagency Operating Agreement shall utilize below market interest rate financing consistent with the objectives of the Program and acceptable to the Department. Such financing shall be on terms and conditions set forth or approved by the Agency and may be for construction loans and/or permanent mortgage loans.

(b) With respect to each project assisted pursuant to this Article, the Agency shall employ such methods, techniques, investigations, tests, analyses, studies and evaluations which in the Agency's judgment, are necessary to assure that the projects proposed for assistance meet the objectives and requirements of the Program, and are substantially consistent with the approved application.

(c) The Agency shall establish such accounts as it deems necessary to comply with the requirements of the Program.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50737

#### 7882. Contracts and Agreements

All developments financed by the Agency shall be governed by contracts and agreements, including but not limited to:

(a) a state contract which shall contain, at a minimum, provisions which:

(1) describe how the assistance under the Program will be used to ensure that each assisted unit will remain available to or occupied by eligible households for a period of not less than thirty (30) years or the term of the below market interest financing, if any, whichever is greater,

(2) specify the amount, manner, terms, and timing of payments by the Department and the Agency under this contract and the Agency and sponsor under the regulatory agreement or assistance payments contract, as appropriate, so as to ensure the economic feasibility of the rental housing development and to protect the interests of the State,

- (3) specify all terms and conditions of the application approval,
  - (4) specify the requirements for reporting in accordance with Section 7884,
  - (5) provide that the terms of such agreements, as they affect the assisted units, shall be binding upon the successors in interest to the parties thereto,
  - (6) establish that the terms of repayment of excess funds and rental payments by the Agency to the Department, and
  - (7) establish the grounds upon which the Agency may reduce the number of assisted units in a rental housing development only if the assistance provided by the Department or Agency cannot provide adequate assistance to maintain the development's fiscal integrity. Any such reduction shall be reviewed no less often than annually as to its continued necessity.
- (b) a Management Agreement,
  - (c) an Assistance Payments Contract which shall set forth terms, conditions, and requirements governing the payment, receipt and use of assistance payment moneys,
  - (d) a Regulatory Agreement which shall contain, at a minimum, provisions which:
    - (1) restrict availability and occupancy of assisted units to eligible households, at affordable rents,
    - (2) specify the number of units and assisted units in the rental housing development and the projected rents for those units, and the manner and conditions under which the ratio of assisted to non-assisted units may be changed,
    - (3) specify procedures for setting rents and calculating utility allowances consistent with this subchapter,
    - (4) require payment of prevailing wage rates and hiring of apprentices with respect to construction of the project,
    - (5) provide for return on investment pursuant to Section 7890,
    - (6) keep the regulatory agreement in effect so long as Agency financing for the housing development remains outstanding, or thirty (30) years, whichever is greater, and to adequately secure such an agreement,
    - (7) require that the sponsor agree to abide by the directives of the Agency regarding assistance payments where the project, in the Agency's judgment, can operate consistent with the Program with less or no assistance,
    - (8) require regular reports as required by the Agency,
    - (9) specify tenant selection and occupancy standards in accordance with the Program,
    - (10) specify the terms of occupancy agreements,
    - (11) require that copies of appropriate documents be available in the language(s) commonly used by residents of the area, and
    - (12) incorporate additional reasonable requirements of the Department or the Agency.
  - (e) The Department, after Committee approval, may require such additional contracts and agreements between the Department and Agency or the Agency and sponsors as it deems necessary to meet the purposes of the Program or the requirements of the Code.
  - (f) All agreements and contracts, other than the Interagency Operating Agreement, or one document referencing all other documents, shall be recorded in the office of the county recorder in the county in which the rental housing development to which they relate is located. When so recorded, they shall constitute a lien on the rental housing development in accordance with this

subchapter for the performance of conditions, including the payment of any money, as specified herein. Recorded agreements shall be indexed in the grantor index to the name of the sponsor and in the grantee index to the State of California.

(g) Any amendment to any agreement or contract which has a material effect on the interests of the Department must be approved, in advance, by the Department. Any amendment to any document approved by the Department pursuant to this subchapter shall be reported at the time reports pursuant to Section 7884 are made.

(h) Prior to their use, any agreement, contract, or other document which effects the interest of the Department, must be approved in form and substance, by the Department. This requirement does not apply to approval of each individual document before execution or use, but only to general review, unless substantive changes or additions are made to the contract at or before the time of execution. Copies of all loan closing documents shall be provided to the Department.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50739, 50745, 50746, 50749

#### 7884. Reporting

(a) The regulatory agreement between the sponsor and the Agency shall contain a requirement that the sponsor report to the Agency at least annually.

(b) The Interagency Operating Agreement shall contain a requirement that the Agency report annually to the Department in a form approved by the Department. Each report shall deal separately with each rental housing development for the which Agency is responsible and shall be submitted to the Department no later than October 31 in each year. The report shall contain such information as the Department may reasonably require, including but not limited to:

(1) the fiscal condition of the rental housing development, including an audited financial statement indicating surpluses or deficits in operating accounts and the amounts of any fiscal reserves,

(2) the substantial defects in physical condition of the rental housing development, including a description of any major repair or maintenance work undertaken in the reporting year,

(3) the occupancy of the rental housing development indicating:  
(A) the number and sizes of assisted units available to or occupied by eligible households,

(B) the distribution of incomes of eligible households,

(C) the ethnic groups to which the eligible households belong,

and

(D) the number of eligible very low income and other lower income households on waiting lists for the assisted units,

(4) general management performance including tenant relations and other relevant information.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50743, 50746

#### 7886. Tenant Selection and Occupancy Standards and Procedures

With respect to the assisted units, except as otherwise required by the Program, the sponsor shall develop tenant selection and occupancy standards and procedures which comply with the requirements of Article 5 (commencing

with Section 11401) of Chapter 2 of Part II of Title 25, California Administrative Code.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Sections 50746, 50749 .

#### 7888. Rent Adjustment Procedures

(a) With respect to the assisted units, tenant's incomes shall be recertified once each year for households in family projects and at least once every two years for households in elderly projects.

(b) If, upon recertification, there have been changes in the household income, the household's rent shall be re-established in accordance with Section 7806, or established at market rent, whichever is indicated.

(c) Base rents may be adjusted at any time following adjustment of cost of living increases pursuant to Section 11453 of the Welfare and Institutions Code and publication of new area median incomes by the Department, and utility cost adjustments shall be made pursuant to Section 7806. A 30-day notice of utility allowance or base rent change shall be given to the tenant prior to the effective date of such an increase or decrease.

(d) Following completion of recertification of tenant income, a 30-day notice to the tenant of rent increase or decrease must be given prior to the effective date of such an adjustment.

(e) Prior to any change in rent, the sponsor shall notify each tenant, in writing, of informal meetings with the sponsor to discuss the rent changes.

(f) Where rents in assisted units are established and charged pursuant to Section 7806(g), then rents shall be adjusted in accordance with the rules and regulations governing the Federal Section 8 program.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50749.

#### 7890. Return on Investment

(a) A sponsor which is not a nonprofit corporation or a governmental agency shall be entitled to distribute earnings in an annual amount not to exceed six percent (6%) of the sponsor's actual investment in a rental housing development, excluding unaccrued liabilities of the sponsor.

(b) Notwithstanding subdivision (a), the Committee may authorize the distribution of earnings of an amount greater than six percent (6%) but not to exceed ten percent (10%) on a family rental housing development if, at the request of the Agency, it determines:

(1) that without the allowance of such greater rate of return the Agency would not be able to comply with the requirements of this subchapter, and

(2) that such greater rate of return is reasonable taking into account the circumstances of the rental housing development.

(c) By a time to be determined by the Agency, the Agency shall report to the Department as to the amount of the sponsor's investment on which the allowable return will be calculated. Such amount shall include the sponsor's actual investment in the rental housing development, other than any unaccrued liabilities of the sponsor.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50746

7892. Transfer, Foreclosure, Breach, or Termination of Assistance

(a) If the sponsor intends to sell or convey the rental housing development, express, prior written approval of the Agency is required and may be given provided that the following terms shall be incorporated:

(1) The successor in interest to the grantor agrees to assume the obligations of the grantor relating to the Program specified in the regulatory agreement.

(2) The successor in interest is an eligible sponsor and demonstrates that it can successfully own and operate the rental housing development.

(b) The Agency, at its discretion, may demand repayment of the grant or a lesser amount equivalent to the value of prior use of the premises or seek enforcement by proceedings at law and/or in equity, at the option of the Agency, against any person or persons or entity violating or attempting to violate any covenant or condition of the regulatory agreement.

(c) Prior to taking any action under subdivisions (b) or (c), the Agency shall:

(1) provide the sponsor with 30 days written notice of the breach or default, and seek and encourage correction or compliance,

(2) provide the Department 24 hours notice of the breach and the intention to foreclose, default, or litigate, and

(3) consult with the Department regarding action intended.

NOTE: Authority cited: Health and Safety Code Section 50737. Reference cited: Health and Safety Code Section 50746

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