STATE OF CALIFORNIA

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

STATE CDBG
REGULATIONS

TITLE 25- §7050-7126 CALIFORNIA CODE OF REGULATIONS

Revised and Adopted July 28, 2016

State of California
Department of Housing and Community Development

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION — REGULAR

(See instructions on reverse)

For use by Secretary of State only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California
JUL 28 2016
3:14 PM

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2016-0112-06	2016-0617-05S	

For use by Office of Administrative Law (OAL) only

NOTICE	REGULATIONS
RECEIVED FOR FILING PUBLICATION DATE JAN 12 '16 JUN 22 '16 Office of Administrative Law	2016 JUN 17 P 4:08 OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY: Department of Housing and Community Development

AGENCY FILE NUMBER (If any):

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Community Development Block Grant Program	25	7062	January 22, 2016

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Patrick Talbott	916-263-2297	916-263-3394

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[X] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn	2016, 4-Z	1-22-16

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1. SUBJECT OF REGULATION(S): Community Development Block Grant (CDBG)

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	
TITLE(S): 25 CCR	ADOPT: 7062.5, 7065.5 per agency request
	AMEND: per agency request ~~7062.5~~; 7065 ~~; 7065.5~~ per agency request
	REPEAL:

3. TYPE OF FILING

- [X] Regular Rulemaking (Gov. Code §11346)
- [ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- [ ] Emergency Readopt (Gov. Code, §11346.1(h))
- [ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- [ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- [ ] File & Print
- [ ] Print Only
- [ ] Emergency (Gov. Code, §11346.1(b))
- [ ] Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- [ ] Other (Specify) _____

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
MARCH 23, 2016 TO APRIL 7, 2016

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- [ ] Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
- [X] Effective on filing with Secretary of State per agency request
- [ ] §100 Changes Without Regulatory Effect
- [ ] Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- [X] Department of Finance (Form STD. 399) (SAM §6660)
- [ ] Fair Political Practices Commission
- [ ] State Fire Marshal
- [ ] Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
PATRICK TALBOTT	916-263-2297		PATRICK.TALBOTT@HCD.CA.GOV

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
per agency request	4/28/16

TYPED NAME AND TITLE OF SIGNATORY: John Hibert, Chief Deputy Director ~~Ben Metcalf, Director~~

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ENDORSED APPROVED

JUL 28 2016

Office of Administrative Law

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TITLE 25.
HOUSING AND COMMUNITY DEVELOPMENT DIVISION 1.
HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER 7. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS
SUBCHAPTER 2. STATE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

TABLE OF CONTENTS

Article 1 **General**

§ 7050 General 1
§ 7052 Primary Objectives 1
§ 7054 Definitions 1

Article 2 **Application Process**

§ 7056 Application Eligibility and Requirements 5
§ 7058 Eligible Activities 6
§ 7060 Eligible Applicants 7
§ 7062 Special Allocation for Native American Indian Communities 8
§ 7062.1 Special Allocation for Economic Development 9
§ 7062.3 Special108 Loan Guaranty Pledges 16
§ 7062.5 Special Allocation for Federal Disaster or Other Emergency Supplemental Assistance 18
§ 7065 Special Grant Amendments for Disasters 19
§ 7065.5 Special Disaster or Emergency Supplemental Assistance NOFAs 19
§ 7068 Administrative Cost Limitation 20
§ 7070 Contents of the Application 21
§ 7072 Submission of Community Development Allocation Native American Applications 22
§ 7076 Award of Funds 23
§ 7078 Evaluation Criteria 24

Article 3 **Other Program Requirements**

§ 7080 Citizen Participation 38
§ 7082 Environmental Reviews 39

§ 7084 Nondiscrimination 39
§ 7086 Relocation and Acquisition 40
§ 7088 Labor Standards 40
§ 7090 Architectural Barriers Act of 1968 40
§ 7092 Hatch Act 41
§ 7094 Lead-based Paint Poisoning Prevention Act 41
§ 7096 Use of Debarred, Suspended, or Ineligible Contractors or Sub-recipients 41

Article 4 **Grant Administration**

§ 7097 Grant Agreements 41
§ 7098 Cash Depositories 42
§ 7100 Bonding 42
§ 7102 Retention and Custodial Requirements for Records 42
§ 7104 Program Income 42
§ 7106 Standards for Grantee Financial Management Systems 43
§ 7108 Financial Reporting Requirements 43
§ 7110 Monitoring and Reporting of Program Performance 44
§ 7112 Grant Payment Requirements 45
§ 7114 Revision Procedures 45
§ 7116 Grant Closeout Procedures 46
§ 7118 Property Management Standards 48
§ 7120 Procurement Standards 48
§ 7122 Audit Requirements 48
§ 7124 Lump Sum Drawdown for Property Rehabilitation Financing 48
§ 7126 Conflict of Interest 49

Article 1 – GENERAL

§ 7050. General.

The Federal Omnibus Budget Reconciliation Act of 1981 provides for State administration of the Federal Community Development Block Grant Nonentitlement Program. These regulations set forth the policies and procedures governing the State's management and use of these funds. In addition to these regulations, program participants must comply with Federal regulations contained in Title 24 of the Code of Federal Regulations, Part 570, Subpart I. In the event that Congress or the State Legislature add or amend any requirements concerning the use or management of these funds, grantees shall comply with such requirements upon receipt of notice from the Department of the additional requirements.

Note: Authorities cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5301 and 5306(d); Federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35); and 24 CFR, Part 570, Subpart I.

§ 7052. Primary Objectives.

The primary objectives of this program are: 1) the development and preservation of cities and counties by providing decent housing and a suitable living environment and expanding economic opportunities, principally for the targeted income group; and 2) not less than fifty-one percent (51%) of the funds made available to the Department pursuant to the program shall be utilized by the Department to make grants to eligible cities or counties for the purpose of providing or improving housing opportunities for the targeted income group or for purposes directly related to the provision or improvement of housing opportunities for the targeted income group including, but not limited to, the construction of infrastructure.

Pursuant to Section 104(a)(1) of the Housing and Community Development Act of 1974, as amended, the Department shall annually prepare a statement of community development objectives and projected uses of funds. This statement shall be made available to the public and published, and the Department shall conduct no less than two public hearings at different locations on its contents. The statement shall be available for review for at least thirty (30) days prior to the public hearings.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406, 50407 and 50828, Health and Safety Code; 42 U.S.C. 5301 and 5304(a)(1) and (2); 24 CFR, 570.489 and 570.490.

§ 7054. Definitions.

"Act" means Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., as amended.

"Activity" means any single eligible undertaking carried out as part of an applicant's program under the State CDBG Program.
"Applicant" means any eligible city or county that applies for funds pursuant to this subchapter as set forth in Section 7060.

"CFR" is the acronym used for the Code of Federal Regulations.

"Chief executive officer" of a unit of local government means the mayor of a city, the chairman of a county board of supervisors, or the official designated pursuant to law by the governing body of the unit of general local government who has the primary responsibility for the conduct of that unit's governmental affairs.

"CDBG" means the Community Development Block Grant program as created by the Act.

"Community Development Block Grant Funds," "CDBG Funds," or "Grant Funds" means any funds allocated by a grant agreement pursuant to this subchapter or previously funded to nonentitlement jurisdictions by HUD pursuant to their authority under the Act.

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

"Director" means the Director of the Department.

"Economic Development Allocation" means the funds set aside each year for economic development pursuant to Health and Safety Code Section 50827 and Section 7062.1.

"Economic Development", and "ED" for the purpose of these regulations, means providing grants to non-entitlement jurisdictions to conduct CDBG eligible activities as defined in 42 USC 5305.

"Federal regulations" means the federal regulations governing the State administration of the Community Development Block Grant nonentitlement funds set forth in the Code of Federal Regulations, Title 24, Part 570, Subchapter C, Subpart I, commencing with Section 570.480.

"Funding" means financial assistance provided in whole or in part for any eligible activity.

"Funding Cycle" means the annual period of time during which HUD makes funds available to the State for distribution to local governments pursuant to the Act, and includes the period of time during which the Department solicits applications and makes grant awards.

"General" means all activities, other than Economic Development activities, eligible under 42 USC 5305 and 24 CFR 570.482. "General" as defined here can also refer to "Community Development".

"Grant Agreement" means the contractual arrangement between the State and the Grantee which sets forth the terms and conditions by which State CDBG funds are utilized.

"Grantee" means a unit of general local government which has been awarded funds provided pursuant to this subchapter to carry out a program.

"Household" means persons occupying a housing unit as the place of residence.

"Housing Element" means the part of a city or county's General Plan as required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

"HUD" means the United States Department of Housing and Urban Development.

"Infrastructure" means the physical systems such as roads, sidewalks, streetlights, water and sewer facilities which are necessary to provide basic community services.

"Lowest Targeted Income Group" means persons and households with incomes less than 50 percent of the latest HUD estimated area median family income who are intended to be beneficiaries of the State CDBG Program.

"Microenterprise" means a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

"NOFA" is the acronym used for Notice of Funding Availability. The NOFA is the document used by the Department to announce that CDBG funds are available and applications may be submitted.

"Overpaying" means households which are paying more than 30% of their gross household income for housing costs, including utilities. Data used to document overpaying includes the percentage of renters who pay more than 30% of household income for gross rent, including utilities, and the percentage of homeowners who pay more than 30% of household income for selected housing costs, including utilities, based on the latest available U.S. Census data.

"Over-the-Counter" or "OTC" means an allocation of Economic Development funds designated for large business assistance or infrastructure in support of business projects.

"OMB" means the federal Office of Management and Budget.

"Permanent job" means a full-time or full-time equivalent job created or retained by an activity funded under the Economic Development Allocation which is directly related to the expansion or retention of a business. To be considered "full-time" a job must provide at least 1,750 hours per year. Part-time jobs that provide at least 875 hours per year of employment may be aggregated to arrive at a full-time equivalent job of at least 1,750 hours per year.

"Poverty Persons" means individuals whose incomes are below the poverty level based on the latest available U.S. Census data.

"Program" means all of the activities funded in whole or in part included in an application which are funded under this subchapter.

"State" means the State of California.

"Targeted Income Group" or "TIG" means persons or households with low to moderate income (Low/Mod) as defined in 42 USC 5302(a)(20). "TIG" as defined here can also be referred to as "Low/Mod".

The following definitions are described in Section 7078(d)(10)

"3rd Party Documentation"

"Activity Specific Operator Experience"

"Age of Housing"

"All Funding in Place"

"Condition of Approval for PIHNC"

"Cooperation/Compliance in Clearing Audit or Monitoring Findings"

"Experienced In-House Staff'

"Extent of the Solution"

"Homeownership Rate"

"In-House Organizational Capacity"

"Low-Mod Percentage"

"Market Analysis"

"Operator Experience / Program Readiness"

"Overcrowding"

"Poverty Percentage"

"Project Approval Status"

"Program Description"

"Program Guidelines"

"Program Operator Qualifications"

"Program Operator's Status"

"Ready to Start"

"Regional Housing Needs Assessment / RHNA Data"

"Rental Vacancy Rate"

"Reporting Points"

"Seriousness of Health and Safety Threat"

"Severity of the Problem"

"Site Control"

"Site Control of Facility for Program"

"Site Control of Land for Project"

"Timely Clearance of Special Conditions"

"Unemployment"

"Waiting List of Pre-Screened Applicants"

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Section 65580 et seq., Government Code; Sections 50406, 50407 and 50827, Health and Safety Code; 25 California Administrative Code 6008(c)(5), 42 U.S.C. 5301, et seq.; and 24 CFR, Part 570, Subpart I.

Article 2- APPLICATION PROCESS

§ 7056. Funding Availability.

(a) Within a funding cycle, the Department may issue one or more NOFAs.

(b) The NOFA shall specify, among other things, the maximum amounts of funds available, the activities eligible, the time frame for submittal of applications, the application requirements pursuant to Section 7070, the allocation of rating points pursuant to Section 7078, the matching contribution requirements pursuant to Section 7058(a)(5)(A) any prohibitions of uses of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.

(c) In order to comply with any set-aside established by HUD or the Department, or special allocation made by HUD, the Department may do one or more of the following:

(1) Issue a special NOFA

(2) Specify in each NOFA the reservation of a portion of the funds; and

(3) Specify in each NOFA any waivers to requirements granted by HUD in connection with the funds.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570 489(b). Reference: Sections 51200, et seq., and Sections 65580 et seq., Government Code; Sections 33031, 33032, 50406, 50407, 50829 and 50830, Health and Safety Code; 42 U.S.C. 5304 and 5306; 24 CFR 570.489(a) and (b) and 24 CFR 570.901(b)(3).

§ 7058. Eligible Activities.

(a) Eligible Activities: Activities eligible for funding under State CDBG Program are those described in 24 CFR 570.482 and in Section 105(a) of the Housing and Community Development Act of 1974 (42 USC 5305):

(1) Housing Assistance- Single Family Residence (1-4 units) or Multi-Family Housing (5 or more units)- Acquisition, Rehabilitation, New Construction;

(2) Public Facilities -Acquisition, Rehabilitation, Construction;

(3) Infrastructure and Infrastructure in Support of Housing;

(4) Public Services- Certain costs associated with providing services including but not limited to Child Care, Health Care, and Job Training.

(5) Planning and Technical Assistance- Costs associated with completing a planning study.

(A) Pursuant to Health and Safety Code 50833(a) the cash match amount is five percent (5%) of the Planning and Technical Assistance grant amount applied for.

(6) Economic Development including Business Assistance and Micro Enterprise Assistance. (b)

Each activity must meet all benefit requirements of 24 CFR 570.483 and 24 CFR 570.484 by the end of the contract term.

(1) At least fifty-one percent (51%) of the funds awarded shall benefit the targeted income group. No activity or portion of a program assisted by these funds may exclude from its benefits the lowest targeted income group. Individual activities shall meet one of the following three national objectives: (1) the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income; (2) aiding in the prevention or elimination of slums or blight; or (3) meeting other community development needs having a particular urgency.

(A) For the purposes of this section, "slums" and "blight" means a blighted area or structure characterized by one or more of the following conditions: (1) the buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, which are unfit to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, (2) high crime rate and (3)

other conditions listed in Health and Safety Code Section 33031; and (4) properties which suffer from economic dislocation, deterioration, or disuse because of factors listed in Health and Safety Code, Section 33031.

(B) For the purposes of this section, an activity will be considered to address the standard of urgency if the applicant certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the applicant is unable to finance the activity on its own, and that other sources of funding are not available to meet such needs. For the purposes of this section, any condition which has existed longer than eighteen (18) months prior to the final filing date for applications shall not be considered to meet the standard of urgency.

(c) Each Economic Development activity must meet all benefit requirements listed in Section 7062.1(a)(1) and (2).

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 33031, 50406 and 50407, Health and Safety Code; 15 U.S.C. 681; 42 U.S.C. 1450 et seq.; 42 U.S.C. 5305; 24 CFR, Part 570, Subpart C; 24 CFR 570.489 and 24 CFR 570.482.

§ 7060. Eligible Applicants.

(a) The applicant shall have met the following requirements when the application is submitted:

Any city or county is eligible to apply for the State CDBG Program except a city or county which participates in or is eligible to participate in the HUD administered Community Development Block Grant Entitlement Program.

(2) The applicant shall submit all the application information required in Section 7062.1 and Section 7070 as applicable.

(3) Beginning with the 2013 NOFA, an applicant with one or more current CDBG grant agreements signed in 2012 or later, for which the expenditure deadline established in the grant agreement(s) has not yet passed, shall be ineligible to apply for any additional CDBG funds unless the applicant has expended at least fifty percent (50%) of CDBG funds awarded in 2012 and later. The requirements of this subsection do not apply to Economic Development Over-the-Counter funds.

(4) The applicant must demonstrate to the satisfaction of the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report.

(5) The applicant must have complied with all the Housing Element requirements listed in Health and Safety Code Section 50830.

(b) Applications may be submitted by individual eligible applicants or by groups of eligible applicants in any of the following forms. Except as provided in Subsection (c) below, no eligible applicant may be included in more than one application that provides direct program benefits to that political subdivision. Applications for eligible activities outside the applicant's jurisdiction

must include a joint powers agreement with the city or county in which the eligible activity is located.

(1) An eligible applicant may apply on its own behalf.

(2) An eligible applicant may apply on its own behalf and in the same application on behalf of one or more other eligible applicants.

(3) Two or more eligible applicants which share a program may submit a joint application.

(c) In addition to General and ED activity and application limits identified in the NOFA, an eligible applicant may apply for activities in target areas within or outside of the applicant's jurisdiction when there are concentrations of Native Americans as described in Section 7062 provided the concentration is within an eligible city or county.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 6500, et seq., Government Code; Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5303 and 5306(d)(2); and 24 CFR 570.489.

§ 7062. Special Allocation for Native American Communities.

Pursuant to the requirements of 24 CFR, Part 1, the Department finds that there are within the State of California, communities principally comprised of low-income Native Americans not recognized as Indian Tribes as defined in Section 102(a)(17) of the Act (the Act defines Indian Tribes as any Indian tribe, band, group, and nation . . . of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512)). The Department also finds that these communities have, in previous years, received the benefits of the Act primarily through the Department's successful submittal of applications on their behalf. The Department further finds that its inability to continue to apply on behalf of this minority population, caused by the legal constraints of the 1981 amendments to the Act, and the legal ineligibility of these groups to apply on their own behalf for federally- or State-administered CDBG funds, will have the effect of depriving this minority group from participating in the State CDBG Program unless there are some affirmative measures to ensure its participation.

(a) Pursuant to the requirements and authority of 24 CFR 1.4(c)(6)(ii) and by the direction of the State Legislature, the Department shall set aside an amount equal to one and one quarter percent (1.25%) of the total State CDBG funds to be granted to eligible applicants for identifiable geographic areas within eligible cities and counties comprised of high concentrations of Native Americans not recognized as Indian Tribes as defined in Section 102(a)(17) of the Act. For the purpose of this section, identifiable geographic areas comprised of high concentrations of Native Americans means identifiable geographic areas comprised of no less than fifty one percent (51%) Native Americans not recognized as an Indian Tribe by the Act. An identifiable geographic area may be defined by locally accepted social, historical, physical, political, or past programmatic boundaries.

(b) An application for this set aside may be in addition to another application submitted by an eligible city or county pursuant to Section 7060(b)(1)-(5). Applications submitted under this section will be independently evaluated and ranked against other applications for this special allocation without regard to the rating of an application submitted pursuant to another section of this subchapter.

(c) An application submitted pursuant to this section shall be in the form prescribed for applications in Section 7070 and shall comply in all other respects with this subchapter. CDBG funds utilized within the identifiable geographic areas must principally benefit residents in the targeted income groups without regard to race, religion, national origin, or sex. In the event all the set aside funds are not awarded in a funding cycle, the Department shall award the remaining funds to the highest ranked unfunded applications submitted under Section 7072.

Note. Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code, and 24 CFR 570.489(b). Reference: Sections 50406, 50407 and 50831, Health and Safety Code; Public Law 93-638 (25 U.S.C. 450(b)); Public Law 92-512 (31 U.S.C. 1227(4)); 42 U.S.C. 5306(d)(2); and 24 CFR 570.489.

§ 7062.1. Special Allocation for Economic Development.

(a) The Department shall set aside from the total amount available from HUD, for grants to cities and counties an amount equal to thirty percent (30%) for the activities specified in this section. Applications submitted under this section must comply with all the requirements of this subchapter except where noted in this section. Economic Development Allocation funds shall be awarded through the NOFA process for eligible activities listed in Section 7058 and 7062.1)(a)(1).

(1) Activities eligible for funding under the Economic Development Allocation are those activities which are subject to the Standards for Evaluating Public Benefits set forth in subsection (f) of 24 CFR Section 570.482. Eligible activities shall also meet a national objective as specified in Section 104(b)(3) of the Act (42 U.S.C. Sec. 5304(b)(3)) and 24 CFR Section 570.483. The Department shall utilize Section 105(a) of the Act (42 U.S.C. Sec. 5305(a)), 24 CFR Section 570.482, and Subpart C of Part 570 of the federal CDBG regulations commencing with Section 570.200, for guidance in determining the eligibility of activities proposed under this section. Where CDBG funds are used for public improvements (e.g., water, sewer or road improvements) the national objective shall be met pursuant to 24 CFR Section 570.483.

(2) In order to be eligible for funding from the Enterprise Fund as set forth in subsection (b) or the ED OTC as set forth in subsection (c), with the exception of assistance to microenterprises, a project or activity (hereinafter collectively referred to as an "activity") shall be capable of generating sufficient public benefit relative to the amount of CDBG assistance provided as required by the Act. The Department, with respect to activities funded from the ED OTC, and Grantees with respect to activities funded with Enterprise Funds, shall utilize the federal standards specified at 24 CFR Section 570.484(f) to determine whether sufficient public benefit will be generated by a proposed activity.

(3) Prior to the funding of any activity from either the Enterprise Fund or the ED OTC, the activity shall be underwritten to ensure that:

(i) the activity's costs are reasonable;

(ii) that all sources of activity financing are committed;

(iii) that to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(iv) that the activity is financially feasible;

(v) that to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(vi) that to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the activity. Activities shall be underwritten by the Department, with respect to activities funded from the ED OTC, and by Grantees with respect to activities funded with Enterprise Funds, utilizing the federal Guidelines and Objectives for Evaluating Project Costs and Financial Requirements set forth as Appendix A to 24 CFR Part 570.

(4) A activity funded from the Enterprise Fund or the ED OTC shall be reevaluated by the Department or grantee pursuant to subsections (a)(2) and (a)(3) of this Section if the underlying assumptions relied upon by the Department or the Enterprise Fund grant recipient in making its original funding decision materially change. A "material change", for these purposes, means: (1) a change in the size, scope, location or public benefit of the activity; or (2) a change in the terms or the amount of the private funds (including lender's funds and equity capital) to be invested in the activity; or (3) a change in the terms or the amount of the CDBG assistance to be made available to the activity. If a material change has occurred and a reevaluation of the activity indicates that the financial elements and public benefit to be derived have also changed, then appropriate adjustments in the amount, the type of CDBG assistance and/or the terms and conditions under which that assistance has been offered shall be made to reflect the impact of the material change.

(5) In the event that an activity funded under the Enterprise Fund or ED OTC fails to meet a federal national objective or state or federal eligibility requirement, at the Department's discretion, a Grantee may be required to repay all or a portion of the grant amount from a non-federal source of revenue, and/or may be required to return all or part of any program income received from the CDBG-assisted activity to the Department. In determining the appropriate remedy, the Department shall, at a minimum, consider the following factors:

(1) actions taken by the Grantee to avoid the adverse circumstances in the first place;

(2) actions taken by the Grantee to mitigate the circumstances once the problem was discovered; and

(3) timeliness of steps taken to protect and/or recover CDBG funds. Failure by a Grantee to comply with any requirements or written instructions issued by the Department pursuant to this subsection shall be considered a failure by the Grantee to resolve any

"audit findings or performance problems" and point deductions may be applied to subsequent applications at the time those applications are scored.

(6) Funding maximums from the Economic Development Enterprise Fund Allocation and the Planning Component shall be as set forth in Health and Safety Code Section 50832 subdivision (a) and Section 50833 subdivisions (a) and (b). The Department may waive the eight hundred thousand dollar ($800,000) and five hundred thousand dollar ($500,000) limitations for the Economic Development Allocation after September 1 of each year. Pursuant to Health and Safety Code 50834(c) all funds awarded to the Department from HUD, must be awarded within the Funding Cycle. If not awarded by the end of the Funding Cycle, the funds shall no longer be available for Economic Development activities. The Department may allocate funds between the Enterprise funds and OTC as set forth in the NOFA. The NOFA will announce open and close dates for the ED OTC. These dates will be in compliance with encumbrance regulations at 24 CFR 570.494 and Health & Safety Code Section 50834(c).

(7) All Economic Development Allocation funds returned, disencumbered or paid to the State in the form of program income ("returned funds") shall be made available to fund current-year applications to the Enterprise Fund or the ED OTC.

(8) Grants to eligible local governments may be passed through to qualified organizations chartered to perform economic development activities.

(9) Notwithstanding any other provision of this Section, the Director may alter the order applications are reviewed for applicants requesting funds for an urgent need such as an imminent plant closure, an emergency recognized by the State. The Director's decision to alter the order an application is reviewed shall be in writing and made part of the application file.

(b) Enterprise Fund. Economic Development Allocation funds set aside for use pursuant to this subsection shall be known as the Enterprise Fund (Enterprise Fund). The purpose of the Enterprise Fund is to provide a source of funds to establish or enhance local revolving loan fund programs.

(1) At least seventy (70) days prior to the due date for applications, the Department shall notify all eligible cities and counties of the anticipated level of funding for the Enterprise Fund through a Notice of Funding Availability (NOFA) and the deadline for receipt of applications. The Department shall also make available application forms and a training manual which will provide eligible applicants with a consistent format for presenting proposals, information on proposal review factors, and guidance on program policies that may affect an applicant's program design.

(2) Two activities are eligible under the Enterprise Fund. The first is Business Assistance activities under HUD's Special Economic Development Activities under section 105(a)(14), 105(a)(15), and 105(a)(17) of the Housing and Community Development Act of 1974. The second is Micro Enterprise Assistance activities under section (105(a)(22). All Business assistance activities must meet the HUD public benefit standard of job creation or retention under the Statutes covering Special Economic Development Activities referenced above. Business Assistance program activities must also meet the HUD national objective of benefit to TIG persons by mandating 51% of jobs created under public benefit standard be made

available to low income persons. No public benefit requirement will apply to Micro Enterprise Assistance program activities. All Micro Enterprise Assistance programs must meet the HUD definition of micro enterprise size (five or fewer employees) and also meet the national objective of benefit to low income beneficiaries by restricting the program to low income micro business owners.

(3) The maximum Enterprise Fund grant award to a single applicant in a program year shall not exceed $500,000, except as specified at 7062.1(a){6). The Director may establish a lower maximum award through each year's NOFA. A decision to reduce the maximum award shall be based upon the relative demand for Enterprise Fund grants and OTC Component funds during the previous year and the total Economic Development Allocation funds available.

(4) Activities which are eligible for funding from a local revolving loan fund include, but are not limited to: construction loans; new equipment purchase loans; working capital loans; land acquisition loans; loan guarantees; loans for privately owned on-site improvements; grants for public off-site sewer, water and road improvements; and assistance to microenterprises.

(5) Except for assistance to micro enterprises, the cost-per-job created or retained for a grantee's activities proposed for funding from the Enterprise Fund shall not exceed $35,000 in CDBG funds, per job created or retained for each activity. Any activity funded under this component shall meet the standards for public benefit set forth in subsection (f) of 24 CFR Section 570.482.

(6) Allocation Review Procedures and Evaluation Criteria.

(A) Each eligible applicant shall submit an original and two (2) copies of its application to the Department by the application deadline specified in the NOFA. Applications submitted by mail shall be received no later than the deadline. Applications delivered to the Department must be date stamped by the Department prior to 5 P.M. on the due date.

(B) Within thirty (30) days of receipt of an incomplete application, the Department shall return the application to the applicant with a written explanation of the reasons why the application is incomplete.

(C) The Department shall complete the ranking of applications pursuant to the evaluation criteria described in Section 7078(d)(6), within eighty (80) days from the application deadline. Applicants shall be notified in writing of point scores, fund reservations and any adjustments necessary to comply with national objective or eligibility requirements. The Department may condition its award of funds in order to achieve the purposes of this subchapter and to ensure compliance with applicable State and federal requirements.

(D) Successful applicants shall receive a reservation of Enterprise Funds equal to the approved grant amount. These reserved funds shall be held by the Department pending drawdown requests for specific eligible activities.

(7) A Grantee's unused Enterprise Fund grant funds shall be disencumbered thirty-six months after grant agreement execution. The Department may waive this provision in writing if it

determines that compelling circumstances warrant the waiver. For purposes of this subsection only, for activities of $50,000 or less, funds shall be considered "unused" if not approved by the local loan committee for disbursement as a loan to a specified borrower; for activities over $50,000, funds shall be considered unused if the Department has not yet received complete documentation, as determined by the Department, of the proposed borrower's eligibility.

(c) Over-the-Counter Component. Economic Development Allocation funds not allocated to either the Enterprise Fund or the Planning Component shall be made available for award pursuant to this subsection (c), which shall be known as the "Economic Development Over-the Counter-Component" or "ED OTC". Through the ED OTC, the Department shall provide grants to eligible cities and counties to: make loans to employers for an identified CDBG-eligible activity, provided the loan will result in the creation or retention of permanent jobs; or to construct infrastructure improvements which are necessary to accommodate the creation, expansion or retention of a business that will create or retain jobs.

(1) Through a notice of funding availability ("NOFA"), each program year the Department shall notify all eligible cities and counties of the anticipated level of funding for the OTC Component. OTC Component applications shall be accepted on a continuous basis.

(2) Awards from the OTC Component to a single city or county in a single program year shall not exceed $3,000,000, regardless of the number of applications.

(3) Notwithstanding Section 7064(c), two or more applicants may submit a joint application for an OTC Component award. The maximum award for a joint application may not exceed the limit set in 7062.1(c)(2).

(4) All applications will be accepted on a first-come, first-served basis. The Department will use the tiebreaker process as determined in the HUD Annual Plan pursuant to the procedures set forth under Section 7078 if more applications than can be funded are received by the Department on the same day.

(5) All application evaluation criteria are subject to Sections 7070, 7076 and 7078.

(6) In order to be considered complete, an application shall contain the information requested in the NOFA, and such other information as necessary for the Department to evaluate the application using the points and rating factors set forth in subsection (c)(4) of this section and the following information as appropriate:

(A) If an applicant contains a description or analysis which includes quantified information, the source of the information, and the method of computation shall be described. If the Department determines that the method of computation leads to conclusions which are inaccurate or misleading, it may, after consultation with the applicant, adjust the method of computation or the conclusions during the evaluation process.

(B) Evidence that activities proposed for funding meet one of the national objectives specified under Section 7056(b)(3) and detailed under 24 CFR Section 570.483.

(C) If an applicant asserts that an activity will meet the national objective of principally benefitting the TIG, the application shall include a description of the means of verification which the applicant will use to determine the number and income of those households actually benefitting from the program.

(D) A schedule demonstrating that any new jobs that will be generated by the program will be available within 24 months of execution of the grant agreement by the Department.

(E) For off-site public improvement activities, the application shall document the following: how the activity meets the national objective and public benefit requirements specified in 24 CFR Section 570.482(f); that the applicant has negotiated with the businesses and other beneficiaries that will be served by these improvements and obtained an appropriate funding contribution towards the cost of the improvements; and how the activity meets the requirements of paragraphs (2) and (3) of subsection (a) of this Section.

(7) The Department shall review applications based on order of receipt. Within thirty (30) days of receipt of an incomplete application, the Department shall notify the applicant in writing of the reasons why the application is incomplete.

(8) Within 60 days of the date an application is determined to be complete, the Department shall review the application for compliance with state and federal program requirements and provide the applicant, in writing, the Department's decision to approve or deny funding for the application. Applications eligible for funding shall be funded in order of receipt of a complete application.

(9) In making funding decisions, the Department shall first evaluate the application using the following factors and points as threshold criteria. To pass threshold, an application must score at least 50 points.

Factor Points

(A) Percent of county-wide unemployment relative to the Statewide average (A maximum of twenty-five points).

(B) Ratio of CDBG funds per job - maximum ratio of $35,000 per job created or retained (A maximum of fifteen points).

(C) Ratio of private funds to CDBG funds (A maximum of fifteen points).

(D) Quality of applicant's past performance for CDBG economic development contracts (A maximum of fifteen points).

(E) Percent of funds allocated to applicant's general administrative costs (for this purpose, general administrative costs do not include funds budgeted for planning studies). (A maximum of ten points).

(10) Applications which have received 50 or more points shall be reviewed for funding using the following factors:

(A) the extent of the applicant's need for CDBG funds,

(B) the market feasibility of the proposed activities,

(C) the feasibility of the proposed activities under local and other regulatory requirements,

(D) the financial feasibility of the proposed activities. (In analyzing this factor, the Department may determine that an activity is feasible even though other funding sources have not committed their funding to an activity. If the application documents the terms and conditions that will be offered by the other funding sources, then the Department may conditionally commit to funding. This commitment of funding by the Department shall be conditioned upon the final commitment from the other funding sources.),

(E) the capacity of the applicant and its borrower, subcontractors or subgrantees to manage the proposed activities,

(F) the appropriateness of the terms proposed by the applicant, given the documented needs of the business and given the amount of public benefit in the form of job creation or job retention that will result from the CDBG-assisted activity,

(G) the status of the ownership or control of any real estate needed for the proposed activities,

(H) the extent to which the proposed activities involve intrastate relocation of jobs or business, and

(I) the extent of recruitment, training and promotional opportunities for targeted income groups.

(d) Planning and Technical Assistance Component. Through the Planning and Technical Assistance Component ("Planning Component"), eligible cities and counties may apply for, and the Department may award, grants for economic development planning and technical assistance activities. Pursuant to Health and Safety Code 50833 no single city or county shall receive more than two grants. Two or more applicants which share a planning program may submit a joint application. The maximum award for a joint application shall not be more than the maximum grant amount as set for in the NOFA.

(1) Application Procedures and Evaluation Criteria. Each program year, the Department shall notify all eligible cities and counties of the anticipated level of funding for the Planning Component and the earliest date for submitting applications through a notice of funding availability ("NOFA"). The Department shall review Planning Component applications to determine if they meet minimum program eligibility and cash match requirements. Department shall notify applicants, in writing, within 60 days of receipt of a complete application of the

Department's funding determination. To be eligible for funding consideration, an application must meet the following requirements:

(A) The funding request shall contain all the information required in the NOFA and shall contain a certified resolution adopted by the governing body of the eligible jurisdiction documenting the availability of the cash match;

(B) The funding request shall be for an eligible activity and must meet a national objective as specified in 24 CFR Section 570.483; and

(C) If funds will be used to provide direct assistance to an identified business, the activity shall be considered to be technical assistance to a private, for-profit business and the application must include a letter from the benefitted business which: (i) explains why the benefitting business is unable to provide funding for the activity; and (ii) conditionally commits the business to proceeding with the activities which are the subject of the CDBG grant.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406, 50407, 50832, 50833 and 50834, Health and Safety Code; 42 U.S.C. 5304(b)(3), 42 U.S.C. 5305(a) and 42 USC 5306(d)(2) and (3); 24 CFR 570.482, 570.483, 570.489 and 570.493.

§ 7062.2. Special Jobs Bill Provisions. [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 USC 5306(d)(2) and (3); Public Law 98-8 (Emergency Jobs Bill); and 24 CFR 570.489.

§ 7062.3. Special108 Loan Guaranty Pledges.

(a) Commitment of future federal allocations of CDBG Funds to the State ("State pledges") by the Department as collateral for federal guarantees of notes or other obligations issued by eligible cities and counties ("loan guarantees") pursuant to Section 108 of the Act (42 U.S.C. Sec. 5308) and 24 CFR Subchapter C, Part 570, Subpart M commencing with Section 570.700 (collectively, "Section 108") shall be subject to the following conditions:

(1) State pledges shall be given as collateral for loan guarantees only for loans of between $500,000 and $2,000,000.

(2) The total of all outstanding State pledges at any given point in time shall not exceed $16,000,000.

(3) To receive a State Pledge, in addition to the eligibility requirements established by Section 108 of the Act (42 U.S.C. Sec. 5308), an activity must: meet the eligibility requirements specified at Section 7062.1 subsection (a)(2) and (a)(3); and address one of the three CDBG national objectives specified in Section 7052 and as specified in 24 CFR Section 570.483.

(4) Applicants shall demonstrate a reliable repayment source and adequate security in the event the primary source of repayment defaults. The Department may require that the applicant city or county pledge other sources of repayment for the loan such as any local CDBG program income.

(5) State pledges shall not be committed as security for a guaranty which guaranty is the primary source of repayment for federally-issued securities.

(6) The proposed activity upon which the application for State pledges has been based shall be reviewed by the Department according to the HUD guidelines for financial underwriting referenced at Section 7062.1(a)(3).

(7) Any Loan Guaranty Pledges made pursuant to Section 7062.3 are excluded from any funding limitations set forth in this section or set forth at Health and Safety Code Section 50832(a).

(b) Application Procedures and Evaluation Criteria.

(1) To obtain a State pledge, eligible jurisdiction shall make a formal application in writing to the Department.

(2) Applications which have been determined by the Department to be complete shall be reviewed and a decision whether or not to issue a State pledge shall be made in writing within 60 days of the date of receipt of a complete application.

(3) In order to be considered complete, an application shall, at a minimum, include the following:

(A) the amount of the State pledge requested;

(B) sufficient information for the Department to determine that all of the conditions of subsection (a) of this Section have been met; and

(C) sufficient information to conduct the financial underwriting review required by subsection (a)(6) of this Section.

(4) An incomplete application shall be returned to the applicant with a written explanation as to the applicant's deficiencies.

(c) If the Department determines that the requirements of subsection (a) have been met, and that the activity underlying the application conforms to the underwriting standards of subsection (a)(6), the Department shall prepare and issue to the applicant a certification containing, at a minimum, the following statements:

(1) the State of California, acting by and through the Department, agrees to make a pledge of future CDBG grants for which the State may become eligible in the amount of the approved application as security for a loan guaranty from HUD in an equivalent amount;

(2) the Department possesses the legal authority to make such a pledge;

(3) at least seventy percent (70%) of the aggregate use of CDBG funds received by the State, guaranteed loan funds, and program income during the one, two, or three years specified by the Department for its CDBG program will be for activities that benefit low and moderate income persons; and

(4) the Department agrees to assume the responsibilities set forth in 24 CFR Section 570.710 requiring the Department to ensure that the applicant complies with all applicable federal requirements governing the use of guaranteed loan funds.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5308; and 24 CFR 570 700 et seq.

§ 7062.4. Use of Un-allocated Colonia Funds. [Repealed]

Note: Authority cited: Section 50406(h) and 50406(n), Health and Safety Code. Reference: Section 50407, Health and Safety Code; Sections 5305(a) and 5306(d), 42 U.S.C.; and Sections 570.489 and 570.204, 24 C.F.R.

§ 7062.5. Special Allocation for Federal Disaster or Other Emergency Supplemental Assistance.

(a) The Department can administer funding provided under the Stafford Relief and Emergency Assistance Act or other emergency supplemental assistance appropriated by Congress under the Community Development Block Grant (CDBG) program. Funding from a special allocation is separate from the annual CDBG NOFA process but still subject to application federal statutes and regulations as well as state statutes and regulations. Any federal regulations imposed on disaster assistance or other emergency supplemental assistance will supersede any state CDBG statue or regulation, if a conflict between the two occurs. The Department may waive current state CDBG regulations that conflict with or impair the use of disaster or emergency supplemental assistance. The Department may release a special disaster or emergency supplemental NOFA, separate from the annual NOFA process.

(b) Given a presidential declaration of disaster and the enactment of the Stafford Relief and Emergency Assistance Act or the appropriation of emergency supplemental assistance, in order to address the most serious and emergent health, safety, and general welfare needs, the Department reserves the right to invoke any and all means of expediency and funding program design, where not in conflict with any federal statue or regulations, as set forth in Section 7065.5.

Note: Authority cited: Section 50406 and 50833.1 Health and Safety Code; Robert T. Stafford Disaster Relief and emergency assistance act (Public Law 93-288, as amended) and 42 U.S.C. 5121-5207. Reference: Section 50833.1, Health and Safety Code; Robert T. Stafford Disaster Relief and emergency assistance act (Public Law 93-288, as amended) and 42 U.S.C. 5121-5207.

§ 7064. Grant Funding. [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Section 50832(a), Health and Safety Code; and 42 U.S.C. 5306(d)(2).

§ 7065. Special Grant Amendments for Disasters.

(a) A grantee may make a written request to the Department to amend or replace a project or activity set forth in an active grant agreement with a project or activity which would alleviate or mitigate existing conditions which pose a serious actual or impending threat to the health or welfare of the community.

(b) Notwithstanding any other provision of this Subchapter, the Department shall approve such a request and amend the grant agreement accordingly if the Department makes the following findings in writing:

(1) The grantee is located in an area for which a presidential declaration of disaster or the Governor has proclaimed either a "state of emergency" or a "local emergency", as those terms are defined in Government Code Section 8558.

(2) The amendment or replacement project or activity is designed to alleviate or mitigate existing conditions which pose a serious actual or impending threat to the health and welfare of the community;

(3) The amendments have necessary eligibility documentation for each activity and its associated national objective and there is no duplication of eligible costs; and

(4) The amended or replacement project or activity is otherwise eligible for funding under this Subchapter.

Note: Authority cited: Section 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50407 and 50825, Health and Safety Code; 24 CFR 570.482, 24 CFR 570.483; and 24 CFR 570.489(a)(1)(i).

§ 7065.5. Special Disaster or Emergency Supplemental Assistance NOFAs.

(a) Notwithstanding any provision in this Subchapter to the contrary, in the event of a special appropriation of emergency supplemental assistance or a presidential declaration of disaster, or Governor proclaims either a “state of emergency” or a “local emergency” as those terms are defined in Government Coder Section 8558, the Department may issue a special NOFA. The special NOFA will make CDBG program funds available to otherwise eligible state applications located in the areas covered by the federal or state disaster proclamation, pursuant to the following special conditions:

(1) The project or activity shall be designed to alleviate or mitigate existing conditions which pose a serious actual or impending threat to the health or welfare of the community.

(2) The Department will review eligibility documentation for each proposed activity and its associated national objective and ensure there is no duplication of eligible costs; and

(3) The proposed project or activity shall otherwise be eligible for funding under this Subchapter or be eligible pursuant to other HUD eligibility criteria.

(b) In order to address the most serious, emergent health, safety, and general welfare needs, the Department Director or Acting Director may direct funding awards to designated project or activities types, or areas. There measures may include, but are not limited to:

(1) Limiting a NOFA to a designated type of project or activity, or geographic area related to the federal or state disaster proclamation;

(2) Awarding bonus points within a NOFA to a designated type of project or activity, or geographic area;

(3) Reserving a portion of funds in a NOFA for a designated type of project or activity, or geographic area;

(4) Establishing maximum award amounts per applicant, type of project or type of activity;

(5) Making funds available through an over-the-counter process, meaning the Department continuously accepts and evaluates applications until funds are exhausted.

(c) To the extent necessary to address serious, emergent health, safety and general welfare needs, and to expedite the process of making awards, the Department Director or Acting Director may alter or waive state required criteria set forth in Sections 7060, 7062, 7062.1, and 7078. Health and Safety Code Section 50833.1(b) allows for waiving of Sections 50831 and 50833 of the Health and Safety Code. Federal requirements cannot be waived without express written authority from HUD.

Note: Authority cited: Section 50406, Health and Safety Code. Reference: Sections 50406, 50407, 50825 and 50833.1, Health and Safety Code; 24 CFR 570.483.

§ 7066. Procedure for Continuation of Funding. [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(2) and (3); 24 CFR 570.489 and 570.491.

§ 7068. Administrative Cost Limitation.

Grantees may expend up to seven and a half percent (71/2%) of the grant amount for administrative costs, provided that such amounts are justified for the type and complexity of the program, and that there are records to document these charges.

Activity delivery costs directly related to a specific activity are not part of the general administrative costs. For example, the cost of a housing rehabilitation specialist is a rehabilitation cost and the legal costs relating to property acquisition are acquisition costs.

Administrative costs may include, but are not limited to, the following categories:

(a) General administrative activities. Such costs for administration include:

(1) Salaries, wages, and related costs of the Grantee's staff engaged in general management, general legal services, accounting, and auditing.

(2) Travel costs incurred in carrying out the general management of the program.

(3) Administrative services performed under third-party contracts including contracts for such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services related to the general management of the program including rental and maintenance of office space, insurance, utilities, office supplies, and rental or purchase of office equipment.

(b) Information and resources provided to persons in the targeted income group, and to citizen organizations participating in the planning, implementation, or assessment of the Grantee's program.

(c) Costs incurred for environmental studies, including historic preservation clearances, and specific environmental assessments and clearances related to the CDBG Program.

(d) Fair housing activities to facilitate compliance with the requirements of Section 7084.

(e) Community development planning activities.

If a cost cannot be associated with one of the above listed groups and cannot be associated with direct program costs, the Department shall upon the grantee's request make a determination of whether it is an administrative cost, a program cost, or an ineligible cost.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.489, and Section 50833(c), Health and Safety Code.

§ 7070. Contents of the Application.

Applications shall be submitted on forms prescribed by the Department and shall consist of the following items and any other information deemed necessary by the Department to judge the application. The specific forms and required information will be made available annually in the NOFA and accompanying application packet. This information provides the basis for the evaluation in Section 7078 and includes the assurances and agreements necessary for compliance with this subchapter. Where a description or analysis includes quantified information, the source of the information and the method of computation must be described. If the Department determines that the methods of computation are inaccurate or misleading, it may, after consultation with the applicant, adjust this information during the evaluation process.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code.

§ 7072. Submission of Community Development Allocation and Native American Applications.

At least seventy (70) days prior to the due date for applications, the Department will notify all eligible cities and counties of the anticipated level of funding for the State program, and will provide them, with a schedule for filing applications. Applications must be received by the closing date. Each eligible applicant shall submit two (2) copies of its application to the Department.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489. Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(2); 24 CFR 570.489

§ 7074. Preliminary Review of Applications. [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code, 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(2); 24 CFR 570.489.

§ 7076. Award of Funds.

(a) At least 70% of all CDBG funds shall be awarded to activities to benefit Targeted Income Group households pursuant to 24 CFR 570.484

(b) At least 51% of all CDBG funds shall be awarded to activities providing housing for Targeted Income Group households pursuant to Health and Safety Code 50828, providing or improving housing opportunities for persons and families of low or moderate income or for purposes directly related to the provision or improvement of housing opportunities for persons and families of low or moderate income, including, but not limited to, the construction of infrastructure.

(c) Pursuant to Health and Safety Code Section 50827, thirty percent of the total amount of CDBG funds available shall be allocated between three Economic Development activities per Section 7058 of this part:

(1) Economic Development Enterprise Fund,

(2) Economic Development Over-the-Counter

(3) Planning and Technical Assistance

(d) Pursuant to Section 916 of the National Affordable Housing Act of 1990, up to 10% of the total amount of CDBG funds available shall be made available for Colonia activities.

(e) Pursuant to Health and Safety Code Section 50831, one-and-a quarter (1.25%) of the total amount of CDBG funds available shall be made available for Native American activities.

(f) Pursuant to federal CDBG regulations, the remainder of the total amount of CDBG funds available after subtracting the activities in Section 7076 (c) (d) and, (e) shall be allocated to General activities, as listed below, with the amount available based on the actual application demand expressed as a dollar amount requested in response to the initial NOFA of a funding cycle,

1. Housing activities,
2. Public Facilities
3. Public Improvements
4. Public Services, not to exceed 15% of total amount of CDBG funds available, pursuant to 42 USC 5305 (a)(8).

(g) The Department may condition its award of funds in order to achieve the purposes of this subchapter and to ensure compliance with applicable State and federal law.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406, 50407 and 50828, Health and Safety Code; 42 U.S.C. 5306(d)(2); and 24 CFR 570.489.

§ 7078. Evaluation Criteria.

(a) Except for ED OTC activities, individual activity types will be evaluated against other activities of the same type. Where demand for a particular activity exceeds the amount of funds available, the applications for that activity shall be rated and ranked according to the rating criteria set forth in this Section. Activities will be funded in rank order, with the highest rated activities within each activity type funded first until all funds allocated for that activity, pursuant to Section 7076, have been awarded

(b) Applications may be submitted for Planning and Technical Assistance as the sole activity or in combination with other eligible activities. Applications submitted for Planning and Technical Assistance in combination with other eligible activities shall be eligible for funding only if at least one eligible activity is funded. The amount of funds available for Planning and Technical Assistance, as announced in the NOFA, shall be allocated between sole PTA applications and PTA applications submitted in combination with other eligible activities based on the relative amount requested. Applications will be ranked, if needed, per Section 7078(d)(7) to resolve a tie-breaker

(c) In the event there are insufficient funds to fund an applicant's whole activity, the applicant may be offered the amount of funds available, provided it is sufficient to complete the activity.

(d) Applications for each eligible activity shall be evaluated on one or more of the following criteria:

(1) Homeownership Assistance (HA) and Housing Rehabilitation (HR)

(A) NEED and BENEFIT: Up to 400 points

The Department will assign points based on the seriousness of the locality's community development needs, and the impact the program will have on those needs using the following criteria:

1. Need: (250 out of 400 points)

i. Overcrowding (both HA and HR)	125
ii. Home Ownership Rate (HA) or	
iii. Age of Housing Stock (HR	125

2. Benefit (150 out of 400 points)

i. Low-Mod Percentage	100
ii. Poverty Percentage	50

(B) READINESS: Up to 300 points

Readiness of the proposed activity as demonstrated by an activity implementation plan, local government approvals, design progress, and sufficient funding to complete the project as applicable. Readiness points will be based on:

1. Activity Specific Operator Experience	Up to 150
2. Program Guidelines	100
3. Waiting List of Pre-Screened Applicants	50

(C) CAPACITY: Up to 200 points

Capacity to implement the proposed activity, as demonstrated by performance, including timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings.

Capacity points based on:

1. Timely Clearance of Special Conditions	60
2. In-House Organizational Capacity for General Administration and Program Oversight	40
3. Reporting Points (point deductions for missing reports)	70
4. Cooperation/Compliance in Clearing Audit or Monitoring Findings	30

(D) STATE OBJECTIVES: Up to 100 points

1. The Department may award an application up to 100 points for addressing one or more state objectives as identified in the annual CDBG NOFA.

2. Department selection of state objectives shall be based on one or more of the following:

i. Emergent circumstances such as natural disaster or economic dislocation.

ii. Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.

iii. Imbalance in the geographic distribution of funds in prior years' awards.

iv. Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.

v. Federal funding priorities as publicly announced by HUD.

vi. Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.

(2) Multi-Family Housing Acquisition, Rehabilitation or Acquisition/Rehabilitation

(A) NEED and BENEFIT: Up to 400 points

The Department will assign points based on the seriousness of the locality's community development needs, and the impact the program will have on those needs using the following criteria:

1. Need: (250 out of 400 points)

i. Overcrowding	125
ii. Rental Vacancy Rate	125

2. Benefit (150 out of 400 points)

i. Low-Mod Percentage	100
ii. Poverty Percentage	50

(B) READINESS: Up to 300 points

Readiness of the proposed activity as demonstrated by an activity implementation plan, local government approvals, design progress, and sufficient funding to complete the project as applicable. Readiness points will be based on:

1. Activity Specific Operator Experience	Up to 200
2. All Funding In Place	75

3. Site Control	25

(C) CAPACITY: Up to 200 points

Capacity to implement the proposed activity, as demonstrated by performance, including timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. Capacity points based on:

1. Timely Clearance of Special Conditions	60
2. In-House Organizational Capacity for General Administration and Program Oversight	40
3. Reporting Points (point deductions for missing reports)	70
4. Cooperation/Compliance in Clearing Audit or Monitoring Findings	30

(D) STATE OBJECTIVES: Up to 100 points

1. The Department may award an application up to 100 points for addressing one or more state objectives as identified in the annual CDBG NOFA.

2. Department selection of state objectives shall be based on one or more of the following:

i. Emergent circumstances such as natural disaster or economic dislocation.

ii. Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.

iii. Imbalance in the geographic distribution of funds in prior years' awards.

iv. Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.

v. Federal funding priorities as publicly announced by HUD.

vi. Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.

(3) **Public Facilities**

(A) NEED and Benefit: Up to 400 points

The Department will assign points based on the seriousness of the locality's community development needs, and the impact the program will have on those needs using the following criteria:

1. Need: (300 out of 400 points)

i. Severity of Problem	125
ii. Extent of Solution	125
iii. Third Party Documentation	50

2. Benefit (100 out of 400 points)

i. Low-Mod Percentage	50
ii. Poverty Percentage	50

(B) READINESS: Up to 300 points

Readiness of the proposed activity as demonstrated by an activity implementation plan, local government approvals, design progress, and sufficient funding to complete the project as applicable. Readiness points will be based on:

1. Experienced In-House Staff and Ready to Start	Up to 100
2. Project Approval Status	Up to 100
3. Funding In Place	75
4. Site Control of Land or Project	25

(C) CAPACITY: Up to 200 points

Capacity to implement the proposed activity, as demonstrated by performance, including timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. Capacity points based on:

1. Timely Clearance of Special Conditions	60
2. In-House Organizational Capacity for General Administration and Program Oversight	40
3. Reporting Points (point deductions for missing reports)	70
4. Cooperation/Compliance in Clearing Audit or Monitoring Findings	30

(D) STATE OBJECTIVES: Up to 100 points

1. The Department may award an application up to 100 points for addressing one or more state objectives as identified in the annual CDBG NOFA.

2. Department selection of state objectives shall be based on one or more of the following:

i. Emergent circumstances such as natural disaster or economic dislocation.

ii. Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.

iii. Imbalance in the geographic distribution of funds in prior years' awards.

iv. Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.

v. Federal funding priorities as publicly announced by HUD.

vi. Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.

(4) Public Improvements (PI) and Public Improvements In Support of Housing New Construction (PIHNC)

(A) NEED and Benefit: Up to 400 points

The Department will assign points based on the seriousness of the locality's community development needs, and the impact the program will have on those needs using the following criteria:

1. Need: (250 out of 400 points) (Note: An Applicant may only apply for PI as an eligible activity or PIHNC as an eligible activity; an Applicant cannot apply simultaneously for both PI and PIHNC activities. The 'Need' scoring criteria is different for PI and PIHNC activities. The 'Need' criteria for a PI activity is based solely on one factor: the seriousness of health and safety issues, for which a maximum of 250 points may be awarded. The 'Need' criteria for a PIHNC activity is based upon five factors which, when added together, allow a maximum of 250 points to be awarded.)

i. PI: Seriousness of Health & Safety Issue	250
Or (for a PIHNC activity)	
ii. PIHNC: Condition of Approval for PIHNC	150
iii. PIHNC: Renter Overpayment	25
iv. PIHNC: Vacancy Rate	25
v. PIHNC: Overcrowding	25
vi. PIHNC: Regional Housing Need Assessment (RHNA) Data	25

2. Benefit (150 out of 400 points)

i. Low-Mod Percentage	75
ii. Poverty Percentage	75

(B) READINESS: Up to 300 points

Readiness of the proposed activity as demonstrated by an activity implementation plan, local government approvals, design progress, and sufficient funding to complete the project as applicable. Readiness points will be based on:

1. Experienced In-House Staff & Ready to Start	Up to 100
2. Project Approval Status	Up to 100
3. Funding In Place	75
4. Site Control of Land or Project	25

(C) CAPACITY: Up to 200 points

Capacity to implement the proposed activity, as demonstrated by performance, including timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. Capacity points based on:

1. Timely Clearance of Special Conditions	60
2. In-House Organizational Capacity for General Administration and Program Oversight	40
3. Reporting Points (point deductions for missing reports)	70
4. Cooperation/Compliance in Clearing Audit or Monitoring Findings	30

(D) STATE OBJECTIVES: Up to 100 points

1. The Department may award an application up to 100 points for addressing one or more state objectives as identified in the annual CDBG NOFA.

2. Department selection of state objectives shall be based on one or more of the following:

i. Emergent circumstances such as natural disaster or economic dislocation.

ii. Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.

iii. Imbalance in the geographic distribution of funds in prior years' awards.

iv. Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.

v. Federal funding priorities as publicly announced by HUD.

vi. Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.

(5) Public Services

(A) NEED: Up to 400 points

The Department will assign points based on the seriousness of the locality's community development needs, and the impact the program will have on those needs using the following criteria:

1. Need: (300 out of 400 points)

i. Severity of Problem	125
ii. Extent of Solution	125
iii. Third Party Documentation	50

2. Benefit (100 out of 400 points)

i. Low-Mod Percentage	50
ii. Poverty Percentage	50

Up to 300 points

(B) READINESS:

Readiness of the proposed activity as demonstrated by an activity implementation plan, local government approvals, design progress, and sufficient funding to complete the project as applicable. Readiness points will be based on:

1. Operator Experience/Program Readiness	Up to 175
2. Site Control of Facility for Service	125

(C) CAPACITY: Up to 200 points

Capacity to implement the proposed activity, as demonstrated by performance, including timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. Capacity points based on:

1. Timely Clearance of Special Conditions	60
2. In-House Organizational Capacity for General Administration and Program Oversight	40

3. Reporting Points (point deductions for missing reports) 70

4. Cooperation/Compliance in Clearing Audit or Monitoring Findings 30

(D) STATE OBJECTIVES: Up to 100 points

1. The Department may award an application up to 100 points for addressing one or more state objectives as identified in the annual CDBG NOFA.

2. Department selection of state objectives shall be based on one or more of the following:

i. Emergent circumstances such as natural disaster or economic dislocation.

ii. Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.

iii. Imbalance in the geographic distribution of funds in prior years' awards.

iv. Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.

v. Federal funding priorities as publicly announced by HUD.

vi. Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.

(6) Enterprise Fund:

(A) NEED and BENEFIT: Up to 400 points

Need will be based on one or more of the following factors: Unemployment and poverty levels in the jurisdiction, and market analysis.

1. Need:

i. Unemployment 100

ii. Market Analysis 250

2. Benefit

i. Poverty Percentage 50

(B) READINESS: Up to 300 points

Readiness factors will include: Program description, program organization and program operator's experience and performance. Readiness points will be based on:

1. Program Description 25

2. Program Operator's Status 75

3. Program Operator Qualifications 200

(C) CAPACITY: Up to 200 points

Capacity to implement the proposed activity, as demonstrated by performance, including timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. Capacity points based on:

1. Timely Clearance of Special Conditions 60

2. In-House Organizational Capacity for General Administration and Program Oversight 40

3. Reporting Points (point deductions for missing reports) 70

4. Cooperation/Compliance in Clearing Audit or Monitoring Findings 30

(D) STATE OBJECTIVES: Up to 100 points

1. The Department may award an application up to 100 points for addressing one or more state objectives as identified in the annual CDBG NOFA.

2. Department selection of state objectives shall be based on one or more of the following:

i. Emergent circumstances such as natural disaster or economic dislocation.

ii. Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.

iii. Imbalance in the geographic distribution of funds in prior years' awards.

iv. Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.

v. Federal funding priorities as publicly announced by HUD.

vi. Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.

(7) Planning and Technical Assistance: Pursuant to Health and Safety Code 50832(b), PTA applications will be evaluated on a first in first served basis if there are sufficient PTA funds available, but will be ranked only when the PTA allocation is oversubscribed, (where oversubscribed refers to the situation when there is not enough PTA funds to satisfy all the Applicants who submitted their funding application on the same day.) In the event the PTA allocation is oversubscribed then a tie-breaker process will be utilized, where the tie-breaker process is based on jurisdiction-wide poverty levels, with the poverty levels being ranked in descending order (i.e. the Applicant that has the greatest poverty level will be ranked highest in a tie-breaker situation.)

(8) Un-scored Set-Aside: Applications for Housing Assistance, Public Facilities, Public Improvements, Public Services and Enterprise Fund activities may request funding for one unrated eligible activity, up to the maximum specified in the NOFA, which shall be funded if at least one other Housing Assistance, Public Facilities, Public Improvements, Public Service or Enterprise Fund activity proposed in that application ranks high enough to be funded. An applicant may apply for either an un-scored set-aside activity or a PTA but not both.

(9) Economic Development Over-the-Counter (ED OTC) activities will be evaluated on a first come first served basis.

(A) Applications may apply for one or two annual funding awards. Applicants awarded two annual funding awards may not apply for Over-the-Counter Economic Development funds in the second year.

(B) Applications will be evaluated pursuant to Section 7062.1(c)

(C) Applications will be evaluated for compliance with HUD underwriting guidelines set forth as Appendix A to 24 CFR Part 570.

(10) For purposes of this subsection (d), the foregoing terms shall be defined or applied as follows:

(A) NEED and BENEFIT

1. "3rd Party Documentation" shall mean data provided by federal or state regulatory agencies; by local agencies other than the department or division of the jurisdiction submitting the application; or other data from a recognized non-governmental source

2. "Age of Housing" - percentage of all housing units in a jurisdiction that were built prior to 1970.

3. "Condition of Approval for PIHNC" shall mean the requirement that the public improvement activity be listed in the housing project's "Conditions of Approval" document issued by the jurisdiction's Planning Department.

4. "Extent of the Solution" shall mean the extent to which funding the activity will resolve or alleviate the problem or threat.

5. "Homeownership Rate" shall mean percentage of all housing units in a jurisdiction that are owner-occupied

6. "Low-Mod Percentage" shall mean the percentage of all households in a jurisdiction whose income is 80% or below the County's median household income.

7. "Market Analysis" shall mean an analysis of the economic and labor market conditions in a jurisdiction, including local employment rates, size and composition of local businesses, lending opportunities and types of lending products, etc.

8. "Overcrowding" shall mean the percentage of all housing units in a jurisdiction that have 1.01 occupants per room or more.

9. "Poverty Percentage" shall mean the percentage of persons in a jurisdiction whose income falls below the poverty level based on the latest available Census data.

10. "Regional Housing Needs Assessment / RHNA Data" shall mean a regional assessment that quantifies the need for existing and future housing within each jurisdiction, whereby the communities then plan for and decide how they will address this need through the process of completing the Housing Element for their respective General Plans.

11. "Rental Vacancy Rate" shall mean the percentage of all rental housing units that are vacant (includes units 'for rent' and units rented but not yet occupied)

12. "Seriousness of Health and Safety Threat" shall mean the urgency or seriousness of the threat to the public health and safety.

13. "Severity of the Problem" shall mean the seriousness of the threat to the public health and safety.

14. "Unemployment" shall mean the unemployment rate for the city or county applicant as published in the most recently available State Employment Development Department's "Monthly Labor Force For Counties".

(B) Readiness

1. "Activity Specific Operator Experience" shall mean the amount of time, if any, that the Activity Operator as set forth in the application has operated the specific activity being applied for.

2. "All Funding In Place" shall mean the level of commitment of the full amount of funding necessary to implement and complete the proposed project.

3. "Experienced In-House Staff' shall mean the level of work experience the jurisdictional staff has in the CDBG program.

4. "Operator Experience / Program Readiness" shall mean the level of work experience the program operator has in the CDBG program. A program operator may be in-house staff, a subrecipient, or a contract consultant.

5. "Project Approval Status" shall mean how close the project is to receiving all permits for construction and the Notice to Proceed.

6. "Program Description" shall mean a brief narrative description of the proposed activity.

7. "Program Guidelines" shall mean the rules by which a jurisdiction operates a CDBG program.

8. "Program Operator Qualifications" shall mean the level of work experience the program operator has in the CDBG program.

9. "Program Operator's Status" shall mean the level to which the program operator is contractually bound to the jurisdiction: by contract, subrecipient agreement, letter of intent, or not yet bound.

10. Ready to Start" shall mean the jurisdiction's ability to document the steps already taken to clear Special Conditions and implement the activity at the time of application.

11. "Site Control" shall mean the jurisdiction's ability to secure the use of the site or sites.

12. "Site Control of Facility for Program" shall mean the jurisdiction's ability to secure the use of the site or sites necessary to fully implement the proposed program.

13. "Site Control of Land for Project" shall mean the jurisdiction's ability to secure the use of the site or sites necessary to fully implement (construct) the proposed project.

14. "Waiting List of Pre-Screened Applicants" shall mean the list maintained by the jurisdiction of local residents interested in applying for assistance within the proposed program, who have indicated they are eligible for assistance.

(C) Capacity/Past Performance

1. "Cooperation/Compliance in Clearing Audit or Monitoring Findings" shall mean the Department's rating of a jurisdiction's efforts and compliance in clearing audit or monitoring Findings.

2. "In-House Organizational Capacity" shall mean the level to which the jurisdiction staff experience meets the requirements of the duty statements for oversight of the CDBG program.

3. "Reporting Points" shall mean points accumulated or deducted based on submittal status of required CDBG reports.

4. "Timely Clearance of Special Conditions" shall mean clearance of Special Conditions within 90 days from the date of a fully executed grant agreement.

(D) State Objectives

1. Defined within each individual activity scoring section at (d)(1)(D); (d)(2)(D); (d)(3)(D); (d)(4)(D); (d)(5)(D) and (d)(6)(D).

Note: Authority cited: Sections 50406(h) and 50406(n). Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(2); 24 CFR 570.482(a), 24 CFR 570.483(b), and 24 CFR 570.489.

§ 7078.1. Poverty Index (100 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; and 42 U.S.C. 5306(d)(2).

§ 7078.2. Targeted Income Group Benefit (300 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; and 24 CFR 570.489.

§ 7078.3. Need for Activity (200 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; and 24 CFR 570.489.

§ 7078.4. Prior Performance Operating CDBG Grants (150 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; and 24 CFR 570.489.

§ 7078.5. Capacity (150 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; and 24 CFR 570.489.

§ 7078.6. Leverage (50 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; and 24 CFR 570.489.

§ 7078.7. State Objectives (50 points). [Repealed]

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(2); and 24 CFR 570.483(b).

Article 3 -OTHER PROGRAM REQUIREMENTS

§ 7080. Citizen Participation.

Each applicant shall provide opportunities for the participation of all persons who may be affected by the program, especially persons with incomes in the targeted income group. The opportunity to participate shall be available, at minimum, during the following phases of the program: program design and preparation of the application; the preparation of the annual performance report required in Section 7110; the preparation of any program amendments which constitute a reallocation of more than ten percent (10%) of the total program budget; and the preparation of any program amendments which constitute changes in policies, standards, or criteria for program implementation. A minimum of one public meeting is required at each of the program phases listed above. In addition, each applicant shall hold a minimum of one public hearing prior to submitting the application to the Department. The applicant shall provide for public notice prior to each meeting and public hearing and shall make program information available to the public prior to these meetings and hearings. Applicants shall use standard legal and other forms of notice including bilingual notice in areas with concentrations of non-English speaking minorities.

Applicants shall invite written comments on the proposed program and shall write a reply to any comments received. This written correspondence shall be maintained as a part of the public record and copies shall be submitted to the Department along with the application. The Department will respond within thirty (30) days to all correspondence written directly to the Department regarding an applicant's program. Applicants shall maintain a file of documents relevant to their block grant program, including proposed activities and final application, minutes of public meetings and hearings, copies of public notices and performance reviews; these documents shall be available to the public during normal working hours. Citizens shall be provided full and timely access to program records and information in a manner consistent with applicable laws regarding personal privacy and obligations of confidentiality.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5304(a) and (b), and 5306(d)(2); 24 CFR 570.489.

§ 7082. Environmental Reviews.

The grantee shall assume the responsibility for environmental review, decision-making and all other actions required under the California Environmental Quality Act of 1970 (CEQA), Public Resources Code 21000 et seq.; and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq.

In order to ensure compliance with NEPA, grantees shall assume the responsibilities for environmental review and decision making following the procedures for "recipients" of Block Grant funds as set forth in 24 CFR, Part 58, entitled "Environmental Review Procedures for Title I Community Development Block Grant Programs." The Department shall assume the responsibilities set forth in Subpart C of 24 CFR, Part 58 and fulfill the State's role under Subpart J of 24 CFR, Part 58.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Section 50406 and 50407, Health and Safety Code; Section 21000 et seq., Public Resources Code; 42 U.S.C. 4321 et seq.; 42 U.S.C. 5304(g)(4); and 24 CFR. Part 58.

§ 7084. Nondiscrimination.

(a) Discrimination prohibited. No person shall, on the grounds of race, color, religion, ancestry, marital status, physical handicap, national origin, sex, or any other arbitrary basis be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds made available pursuant to this subchapter. All grantees shall comply with the requirements contained in 24 CFR 570.601, 570.602, 570.607, 570.506(g).

Note: Authority cited: Section 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.506(g), 570.601, 570.602, 570.607.

§ 7086. Relocation and Acquisition.

The provisions of the Uniform Relocation Act, as amended, 49 CFR Part 24, and 42 U.S.C. 5304(d) shall be followed where any acquisition of real property is carried out by a grantee and assisted in whole or in part by funds allocated pursuant to this subchapter. In addition, where the rehabilitation of residential rental units results in increased rents for members of the targeted income group, the grantee shall also comply with the requirements of the above-cited sections of federal law. Relocation expenses which may, by law, be paid are eligible expenses for use of CDBG funds.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 42 U.S.C. 5304(d).

§ 7088. Labor Standards.

(a) All laborers and mechanics employed by contactors or subcontractors on construction work assisted pursuant to this subchapter shall be paid by wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276(a) to 276(a)(5)), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the contractors and subcontractors shall comply with all regulations issued pursuant to these Acts and with other applicable federal laws and regulations pertaining to labor standards. This section shall apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families. The Secretary of Labor has, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 133z-15), and Section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276(c))

(b) Grantees shall also assume all responsibilities for compliance with the provisions of Cal. Labor Code, Section 1720 et seq., regarding State labor standards compliance for Public Works as defined in Cal. Labor Code, Section 1720.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; Section 1720 et seq. of the Labor Code; 18 U.S.C. 874; 40 U.S.C. 276(a) to 276(a)(5) and 276(c); 40 U.S.C. 327 to 333; 42 U.S.C. 5310; 24 CFR 570.489 and 570.496(c).

§ 7090. Architectural Barriers Act of 1968.

Every building or facility, other than a privately-owned residential structure, designed, constructed, or altered with funds made available pursuant to this subchapter, shall comply with the requirements of 24 CFR Parts 40 and 41 issued pursuant to the Architectural Barriers Act of 1968 (42 U.S.C. 4151).

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 4151; 24 CFR, Parts 40 and 41; 24 CFR 570.489.

§ 7092. Hatch Act.

Neither the Community Development Block Grant Program nor the funds provided therefor, nor the personnel employed in the administration of the program shall in any way or to any extent engage in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 5 U.S.C. 1501 et seq.; 24 CFR 570.489.

§ 7094. Lead-based Paint Poisoning Prevention Act.

CDBG grantees must comply with HUD's Lead-Based Paint Regulations (24 CFR, Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint, whenever funding awarded pursuant to this subchapter is used directly or indirectly by the grantee for construction, rehabilitation, or modernization of residential structures, elimination of immediate lead-based paint hazards in residential structures assisted pursuant to this subchapter, or the notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1950 and funded under the CDBG program.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 4831 et seq.; 24 CFR, Part 35; 24 CFR 570.489 and 570.496(f).

§ 7096. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients.

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage in the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR, Part 24. "Subrecipients" includes eligible entities under 24 CFR Part 570.204(a)(2) or private entities as described under 24 CFR 570.202(c)(1).

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 24 CFR, Part 24; 24 CFR 570.204(a)(2); 24 CFR 570.202(c)(1); 24 CFR 570.489.

Article 4 - GRANT ADMINISTRATION

§ 7097. Grant Agreements.

(a) Applicants that received award letters will later receive a Grant Agreement, pursuant to 24 CFR 570.503 to be executed by both the local authorized representative and the Department.

(b) The Grant Agreement shall reserve monies from the CDBG allocation in an amount approved for funding by the Department pursuant to Section 7076.

(c) The Grant Agreement shall include all items required in 24 CFR 570.503, 24 CFR Part 85, OMB Circular A-87, OMB Circular A-133, and all applicable sections in Articles 3 and 4 of this Subchapter.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(2); 24 CFR 570.483(b); 24 CFR 570.503; 24 CFR Part 85; OMB Circular A-87 and OMB Circular A-133.

§ 7098. Cash Depositories.

Grantees are not required to establish physical separation of cash depositories for State CDBG funds. Grantees shall establish and maintain all accounts in accordance with 24 CFR 570.489(d)(2)(iii) and 24 CFR 85.20 et. seq.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.489(d)(2)(iii) and 85.20 et. seq.

§ 7100. Bonding.

Grantees shall comply with all bonding requirements described in 24 CFR 85.36(h).

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 85.36(h).

§ 7102. Retention and Custodial Requirements for Records.

The grantee shall retain financial records, supporting documents, statistical records, and all other records pertinent to a grant in accordance with 24 CFR 570.502(a)(16) and 24 CFR 85.42.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.502(a)(16) and 85.42.

§ 7104. Program Income.

(a) "Program Income" means gross income earned by the grantee from grant-funded activities as defined in 24 CFR Section 570.489(e).

(b) Grantees shall account for and disburse program income related to projects financed in whole or in part with grant funds pursuant to 24 CFR Section 570.489(e).

(c) Grantees shall account for disbursement of program income annually or more frequently as required by the Department for cause.

(d) If CDBG local program income will be used to operate a program such as: housing rehabilitation, homeownership assistance, business financial assistance and micro enterprise financial assistance, the applicant shall submit program guidelines to the Department for

approval. No CDBG grant funds or local program income shall be expended to operate a program until the Department has approved the program guidelines in writing.

(A) The program guidelines shall describe how the program will be operated and how it will comply with State and federal regulations. In addition, program guidelines shall address the following topics:

1. Financing terms and interest rates;

2. Underwriting standards;

3. Application processing procedures and timing for loan approvals;

4. Procedures for resolving disputes between the participant and the CDBG grantee;

5. Description of any property restrictions imposed as a condition of receiving the loan (e.g., resale controls, equity sharing);

6. Loan servicing policies addressing the issues of: subordination; refinancing; change in occupancy, change in use, assumptions, and verification of payment of taxes and insurance.

7. If the program will involve rehabilitation or construction, procedures for developing the scope of work, description of the contractor procurement and payment process, and a description of the conflict resolution process in the event of a dispute between the contractor and the program participant

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.489(e).

§ 7106. Standards for Grantee Financial Management Systems.

Grantees shall establish and maintain their financial management systems for CDBG grants in accordance with 24 CFR 85.20 et. seq.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 85.20 et. seq.

§ 7108. Financial Reporting Requirements.

Grantees shall report at least annually on financial matters as required by 24 CFR 85.41.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 85.41.

§ 7110. Monitoring and Reporting of Program Performance.

(a) Grantees shall monitor the performance of grant-supported activities to assure that time schedules are being met and the milestones in the work schedule are being accomplished. This review shall be made for each activity in the approved grant agreement.

(b) Each grantee shall prepare annual and periodic performance reports. Except as provided for in subdivision (d) below, performance reports shall not be required more frequently than quarterly unless warranted by special circumstances.

(c) The performance report for each activity shall describe the following:

(1) A description of actual accomplishments compared to the objectives established for the reporting period. In addition, where the results of activities can be quantified, unit costs shall be reported.

(2) Reasons why established objectives were not met.

(3) Other information such as a specific explanation of cost overruns or high unit costs.

(d) Between the required performance reporting dates, events may occur which have an impact upon the activity or program. In such cases, the grantee shall inform the Department in writing as soon as the following occur:

(1) Problems, delays, or adverse conditions which will affect the grantee's ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of work units by the established time period. This reporting shall be accompanied by a statement of the action taken or contemplated, and any assistance needed, to resolve the situation.

(2) Completion of each milestone in the work schedule.

(e) If a performance review conducted by a grantee discloses the need for change in the budget estimates in accordance with the criteria established in Section 7114, the grantee shall submit a request for budget revision pursuant to that section.

(f) The Department will make site visits to review program accomplishments and management control systems, and to or provide program assistance.

(g) The Department will review each grantee's performance to determine whether:

(1) the grantee has carried out the program as described in its application;

(2) the program complies with this subchapter and other applicable laws and regulations; and

(3) the grantee has the continuing capacity to complete the approved program according to time schedules approved by the Department.

If performance is found not to be in conformance with the grant application, agreement, or approved amendments, the Department may require corrective or remedial actions, or may recall or disencumber grant funds.

Note: Authority cited: Sections 50406(h) and 50406(n) and 50407, Health and Safety Code. Reference: 24 CFR 85.40.

§ 7112. Grant Payment Requirements.

(a) Grant payment methods shall minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the State to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

(b) Grant payments are made to grantees by an advance or a reimbursement. An advance is a payment made by the State to a grantee upon its request before cash outlays are made by the grantee, subject to limitations provided in the grant agreement, and based on the type of grantee program. A reimbursement is a payment made to a grantee upon request for payment of costs already paid by grantee.

(c) Unless otherwise provided by regulation, the State shall not withhold payments for allowable charges made by grantees at any time during the grant period unless (1) a grantee has failed to comply with the grant agreement, or (2) the grantee is indebted to the State and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the Department. Under such conditions, the Department may, upon 15 days notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the noncompliance is resolved or the indebtedness to the State is liquidated.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(3)(A); 24 CFR 570.489, 570.494 and 570.497; and Office of Management and Budget (OMB) Circular A-102.

§ 7114. Revision Procedures.

(a) "Cost categories," as used in this section, means any of the following: personal services, operating expenses, capital outlays, loans, grants or indirect costs.

(b) "Grant budget," as used in this section, means the approved financial plan to carry out the purpose of the grant program, or activity. It should be related to performance for program evaluation purposes.

(c) The grantee may not amend the program or activity in a manner which is inconsistent with the original basis for the award without the Department's written approval of the change. In addition, grantees shall request prior written approval from the Department when a program or budget revision will be necessary for the following reasons:

(1) Changes are to be made in the scope or the objective of the program or activity.

(2) Additional funding is needed.

(3) Amounts budgeted for indirect costs must be reallocated to absorb increases in direct costs.

(4) The need for transfers of funds among cost categories or activities when the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the activity budget. The same criteria shall apply to the cumulative amount of transfers among programs or activities when budgeted separately for an award, except that no transfer is permitted that would cause any grant appropriation, or part thereof, to be used for purposes other than those intended in the grant program; or

(5) When the Department awards a grant which provides support for both construction and nonconstruction work to make any Fund or budget transfers between the two types of work supported.

(d) Grantees shall notify the Department whenever the amount of authorized funds is expected to exceed the needs of the grantee by more than ten thousand dollars ($10,000).

(e) Within 30 days from the date of receipt of the request for grant budget and program revisions, the Department shall review the request and notify the grantee whether or not the revisions have been approved. If the revision is still under consideration at the end of 30 days, the Department shall inform the grantee in writing as to when the grantee may expect the decision.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.4B9(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(3)(A); 24 CFR 570.469 and 570.497; and Office of Management and Budget (OMB) Circular A-102.

§ 7116. Grant Closeout Procedures.

(a) The following definitions shall apply for the purpose of this section.

(1) "Grant closeout" is the process by which the Department determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the State.

(2) "Date of completion" is the date when all work under a grant is completed, or the date in the grant agreement, or any supplement or amendment thereto on which funding ends.

(3) "Termination of a grant" means the cancellation of funding, in whole or in part, at any time prior to the date of completion.

(4) "Suspension of a grant" is an action by the Department which temporarily suspends funding under the grant pending either corrective action by the grantee or a decision by the Department to terminate the grant.

(5) "Disallowed costs" are those charges to a grant which the Department determines to be unallowable.

(b) The grant closeout procedures include the following:

(1) Upon request, the Department shall make payments to a grantee for allowable reimbursable costs under the grant being closed out.

(2) The grantee shall refund to the Department any balance of unobligated cash advanced to the grantee that is not authorized to be retained by the grantee.

(3) Within 90 days after the date of completion of the grant the grantee shall provide the Department with all financial, performance, and other reports required as a condition of the grant. The Department may grant time extensions for cause when requested by the grantee.

(4) When authorized by the grant agreement, the Department may make a settlement for any upward or downward adjustments to the State share of costs after the reports are received.

(5) The grantee shall account for any property acquired in whole or in part with grant funds, in accordance with the provisions of Section 7118, pertaining to property management and Section 7104, pertaining to program income.

(6) In the event a final audit has not been performed prior to the closeout of the grant, the Department shall retain the right to recover the amount of disallowed costs after fully considering the recommendations of the final audit.

(c) The Department shall provide procedures to be followed when a grantee fails to comply with the agreement. When that occurs, the Department may, after notifying the grantee in writing, suspend the grant and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with subdivision (d). The Department shall allow costs which the grantee could not avoid during the period of suspension provided that the costs meet the provisions of the U.S. Office of Management and Budget (OMB) Circular A-87.

(d) Grants may be terminated as follows:

(1) Termination for cause. The Department may terminate any grant, in whole or in part, at any time before the date of completion whenever the Department determines that the grantee has failed to comply with the conditions of the grant agreement. The Department shall promptly notify the grantee in writing of the determination, the reasons for the termination, and the effective date. Payments made to grantees or recoveries by the Department under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

(2) Termination for convenience. The Department or the grantee may terminate a grant, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, and the portion of the grant to be terminated. The grantee shall not incur new obligations for the terminated portion after the

effective date of the termination, and shall cancel as many outstanding obligations as possible. The Department will fund all eligible obligations that the grantee cannot cancel.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code; and 24 CFR 570.489(b). Reference: Sections 50406 and 50407, Health and Safety Code; 42 U.S.C. 5306(d)(3)(A); 24 CFR 570.489 and 570.497; and Office of Management and Budget (OMB) Circulars A-87 and A-102.

§ 7118. Property Management Standards.

Grantees shall adhere to the property management standards described in 24 CFR 85.30 et. seq.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.489(k) and 24 CFR 85.30 et. seq.

§ 7120. Procurement Standards.

Grantees shall adhere to the requirements of 24 CFR 85.36.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 85.36; and 24 CFR 570.502(a)(12).

§ 7122. Audit Requirements.

Grantees shall arrange for independent audits on all CDBG grants consistent with OMB Circular A-128.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.502(a), and Office of Management and Budget (OMB) Circular A-128.

§ 7124. Lump Sum Drawdown for Property Rehabilitation Financing.

Subject to the conditions prescribed in this section, grantees may draw funds from the Department in a single lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately-owned properties as a part of the grantee's program.

The conditions prescribed for lump sum drawndown accounts are described in 24 CFR 570, Section 570.513.

Note: Authority cited: Sections 50406(h) and 50406(n), Health and Safety Code. Reference: 24 CFR 570.513.

§ 7126. Conflict of Interest.

Grantees shall enforce standards for conflicts of interest which govern the performance of their officers, employees, or agents engaged in the award and administration of State CDBG grant funds. The standards for conflicts of interest shall prohibit any conflict of interest as defined in Title 24 Code of Federal Regulations Part 570.611 (as revised on 10-14-83) which is hereby incorporated by reference. The Department shall use the criteria and standards set forth in Title 24 CFR 570.611 in evaluating questions concerning potential conflicts of interest.

Note: Authority cited: Sections 50406(h) and 50406(n). Health and Safety Code, and 24 CFR 570.489(b). Reference: Section 50406(h) Health and Safety Code and 24 CFR 570.611 (90-14-83 edition).