INITIAL STATEMENT OF REASONS

Home Investment Partnerships Program (HOME)
Title 25, California Code of Regulations

Proposed Amendments to:

Section 8217

INTRODUCTION

This Initial Statement of Reasons (ISOR) has been prepared by the California Department of Housing and Community Development (hereinafter "the Department") to describe amendments to regulations currently in effect for the Home Investment Partnerships (HOME) Program and the factual basis for these amendments.

The State of California receives money from the U.S. Department of Housing and Urban Development (hereinafter "HUD") to make grants to eligible cities and counties (State Recipients) and direct loans to private organizations that qualify as Community Housing Development Organizations (CHDOs). These funds can be used for a wide variety of housing related uses so long as the State, State Recipients and CHDOs comply with a comprehensive set of requirements prescribed by federal law and regulations.

HOME funds are made available to cities, counties, and CHDOs through a Notice of Funding Availability (NOFA) and applications are reviewed, rated, and ranked using various criteria set forth in the State's HOME regulations (regulations).

These regulations can be found at can be found at Title 25, Division 1, Chapter 7, Subchapter 17, Sections 8200-8220. They establish procedures for the award and disbursement of HOME funds, and establish policies and procedures for use of these funds to meet the purposes contained in the federal HOME regulations at 24 CFR Part 92.State authority for the administration of the HOME Program is contained in Health and Safety Code Sections 50406 and 50896.3(b).

DISCUSSION OF PROPOSED AMENDMENTS

Section: 8217. Project Deadlines

Subsection (c)

Change #1:

Problem: The intent of this subsection is to provide an exception to the penalties for missing project deadlines where the reasons for missing the deadlines are beyond the control of the collective development team. As currently worded, it could be argued that a missed deadline that is beyond the control of any single member of the development team is grounds to grant the exception.

Primarily, this clarification is needed to prevent HOME applicants from requesting an exception to a performance penalty by claiming that the mistakes of their development team members were outside of their control and as such, they should not be held responsible for them. When a State Recipient or CHDO selects a developer, for example, if that developer fails to meet a project deadline, the State Recipient or CHDO as the recipient of the HOME award and the party under contract with the Department, is ultimately responsible to the Department for performance on the project, just as the Department is ultimately responsible to HUD for performance on that project. Hence, a State Recipient or CHDO cannot claim that they should not be held responsible for the failures of their development team, just as the Department cannot claim to HUD that it should not be held responsible for failures of a project development team.

Solution: The wording has been changed to make clear that a missed deadline must be beyond the control of all of the following parties; that is, the applicant, developer, owner, managing general partner.

Change #2:

Problem: The current subsection does not extend the exception for missed deadlines to a project that fails to meet three (3) of the listed time frames. As a result of the economic downturn, HCD is seeing more HOME projects that have missed or are threatened with missing three deadlines due to circumstances that are well beyond the control of all of the development team members. Following are two examples of the problem:

Tax Credit Financing: Most HOME-financed affordable rental housing projects rely on funds provided through equity contributions made by investors taking advantage of state and federal low-income housing tax credits (“tax credits”). In past years during the height of the housing boom tax credits were selling as high as 95 cents on the dollar (i.e., for each dollar of eligible development cost [excluding land], investors paid 95 cents as an equity contribution). Today, credits are selling for approximately 65-75 cents on the dollar. This value may go as low as 40 cents on the dollar in 2009. A drop in the value of tax credits creates a financing gap in the project’s development budget that must be made up with grants or loans. Finding replacement financing in the current environment is difficult and time consuming. As a result, HOME has an increasing number of projects for which a funding commitment has been issued, but the project is stalled because the developer either cannot secure a tax credit investor, or the value of the credits has declined creating a significant financing gap.

Infrastructure Financing: HOME projects are sometimes constructed in a Planned Unit Development (PUD) along with for-profit projects. Infrastructure (e.g., streets, water and sewer lines) in PUD's is often paid through developer fees. Recently a HOME project in a PUD was stalled when for-profit developers abandoned the project because of declines in the future value of the PUD's market-rate housing. Without infrastructure, the HOME project cannot proceed.

Solution: The language of the subsection is being amended to extend the existing penalty exception to projects that have missed three deadlines.