

TITLE 25. Housing and Community Development
HOME Program
PROPOSED REGULATIONS

§ 8200. Purpose and Scope.

(a) These regulations 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 Title II of Public Law No. 101-625, 104 Stat. 4079 (Nov. 28, 1990), (42 USC 12701), known as the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended by the Housing and Community Development Act of 1992, Public Law No. 102-550.

(b) The Cranston-Gonzalez National Affordable Housing Act of 1990 and any amendments thereto provide for state administration of the Home Investment Partnerships Program. These regulations set forth the policies and procedures governing the department's management of these funds. In addition to these regulations, program participants shall comply with the HOME rules applicable to the state program as set forth in 24 CFR part 92. In the event that Congress, the California Legislature, or HUD add or change any statutory or regulatory requirements concerning the use or management of these funds, program participants shall comply with such requirements.

(c) The Department may carry out its own HOME program to fund a Developer only if the Developer is (1) not applying as a CHDO and also (2) receives no HOME funding from a State Recipient for that calendar year that Federal Regulation 24 CFR 92.201 regarding "Distribution of assistance" is met. The Department may also under its own HOME program fund projects on Indian reservations and Native American Lands if the Developer is a Native American Entity or is an entity having co-ownership with a Tribally Designated Housing Native American Entity. There shall be adequate security and enforcement measures for any loan, grant and regulatory agreement made by the Department (to any Developer and any project on Native American Lands) under its own HOME program through required legal documents pursuant to Section 8214.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR part 92, 24 CFR 92.201(b)(2), 24 CFR 92.201(b)(5); and sections 50896, 50896.1 and 50896.3, Health and Safety Code.

§ 8201. Definitions.

In addition to the definitions found in 24 CFR Section 92.2, the following definitions shall apply to this subchapter. These definitions are further provided to clarify applicable provisions contained in 24 CFR Section 92.2.

(a) “Administrative subcontractor” means any entity or individual which contracts with the State Recipient or CHDO to provide any portion of administrative services to the local HOME activity. Individuals or groups that are acting in the capacity of developer, owner, or sponsor of a project shall not act as administrative subcontractors for the activity.

(b) “Applicant” is any city, county, or CHDO which submits an application to the Department to operate programs or develop or rehabilitate projects using HOME Funds within a specified jurisdictional boundary. “Applicant” is also any Developer which submits an application to the Department (under the Department administered HOME program,) to develop or rehabilitate projects using HOME Funds within a HOME eligible jurisdiction. A Developer of a project shall not act as administrative subcontractor for the activity.

(c) “Award letter” means a conditional reservation letter signed by the director indicating that the Department has reserved funds for a project or program subject to meeting specific conditions in the regulations.

(d) RESERVED.

(e) “CFR” is the acronym used for the Code of Federal Regulations.

(f) “CHDO” is the acronym for Community Housing Development Organization and means those organizations which meet the criteria set forth in 24 CFR Section 92.2 and are certified by the Department pursuant to Section 8204.1.

(g) “Conditional reservation” means the Department has reserved funds for a project or program subject to meeting specific conditions in the regulations and in the award letter.

(h) “Department” means the State of California, Department of Housing and Community Development, which shall serve as a participating jurisdiction as defined by 24 CFR Section 92.2, for the purposes of this program.

(i) “Developer” - is any legal entity that will provide or arrange for design, financing and construction services in connection with a housing project, including Native American Entities. A CHDO can apply as a Developer in which case the CHDO will be treated the same as a Developer. A Developer may be an entity having co-ownership with a Tribally Designated Housing Entity.

(i)(i) “Director” means the director of the Department.

~~(k)~~(k) “Family” is a household consisting of an individual or two or more persons who by blood or marriage, or otherwise, live together in a housing unit.

~~(l)~~(l) “Federal disbursement and information system” is the computerized system operated by HUD which manages, disburses, collects data and reports on the use of HOME funds.

~~(m)~~(m) “First-time homebuyer” means an individual or individuals or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with HOME assistance, except that the following individual or individuals may not be excluded from consideration as a first-time homebuyer under this definition:

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

(2) a single parent who, while married, owned a home with his or her spouse or resided in a home owned by a spouse. A single parent is an individual who: 1) is unmarried or legally separated from a spouse, and 2) has custody or joint custody of one or more minor children or is pregnant; or

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

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

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

~~(n)~~(n) “First-time homebuyer program” means HOME funds are provided to a city, county or CHDO to administer a program to assist first-time homebuyers. Eligible uses of these funds consist of: 1) a city or county providing a loan to the homebuyer for acquisition of a dwelling that the homebuyer selects from the open market; 2) a city or county providing a loan and/or grant to the homebuyer for acquisition and rehabilitation of a dwelling provided the work is done after transfer of ownership interest; 3) a CHDO providing assistance for the acquisition and rehabilitation of a dwelling provided that the CHDO is the sole owner of the dwelling during the rehabilitation period; and 4) a city, county or CHDO providing assistance for the construction of scattered site dwellings, with no more than four dwellings on each vacant site, and each site shall be in an

existing built-out neighborhood. Such dwellings shall then be sold to first-time homebuyers.

~~(n)~~(o) “First-time homebuyer project” means that HOME funds are used to develop a specified number of units to be sold to first-time homebuyers. By the conclusion of construction, the entire HOME investment shall be converted to mortgage assistance to the first-time homebuyers.

~~(e)~~(p) “Funding cycle” means the annual period of time during which HUD makes funds available to the Department for distribution pursuant to the Act, and includes the period of time during which the Department solicits applications and makes conditional reservations of funds.

~~(p)~~(q) “HOME” is the abbreviation used for the Department-administered Home Investment Partnerships Program.

~~(q)~~(r) “HOME fund” means the account established in the U.S. Treasury Account of the HOME Investment Trust Fund, to which funds for the Department’s use in the HOME program are allocated.

~~(t)~~(s) “Housing” means any structure, which is currently for residential use, or proposed for residential use, in whole or in part, including manufactured housing as defined in Health and Safety Code Section 18007.

~~(s)~~(t) “Housing element in substantive compliance” means the local public entity’s adopted housing element is in substantive compliance as demonstrated by a letter from the Department which sets forth findings that the housing element adopted within the time frames required by Section 65588 of the Government Code includes that substance essential to every requirement of Article 10.6, commencing with Section 65580, of Chapter 3 of Division I of Title VII of the Government Code.

~~(t)~~(u) “HUD” means the United States Department of Housing and Urban Development.

~~(u)~~(v) “Leverage” means all documented monetary and non-monetary contributions, other than HOME funds, which have been assigned a measurable value and which are applied to the specific HOME-assisted project. Leverage does not include contributions toward the cost of non-low-income units and commercial space.

(w) “Local account” is an account maintained by the Department, or State Recipient, or CHDO, as may be specified in an agreement between the Department and a State Recipient, or CHDO, which shall include repayments of HOME funds and matching contributions and any payment of interest or other return on the investment of HOME funds and matching contributions.

(x) “Native American Entity” is any Tribal government or Tribally Designated Housing Entity.

(y) “Native American Lands” means real property located within the State of California that meets both the following criteria: ~~(a)~~(1) it is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual

Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and ~~(b)~~ the land may be leased for housing development and residential purposes under federal law; or (2) lands outside the jurisdiction of tribal government owned or co-owned by a Native American Entity

(z) “NOFA” is the acronym used for Notice of Funding Availability. The NOFA is the document used by the Department to announce that funds are available and applications may be submitted.

(aa) “Owner-occupied rehabilitation program” means funds are provided to a city or county to administer a program to assist owners of homes that are in need of rehabilitation as defined in Section 8201(y).

(bb) “Rehabilitation” means repairs and improvements to substandard housing which are necessary to meet rehabilitation standards as defined in Section 50097 of the Health and Safety Code, to eliminate conditions specified in Section 17920.3 of the Health and Safety Code, and to meet housing quality standards as set forth in 24 CFR Section 982.401. Rehabilitation also means repairs and improvements which are necessary to meet any locally-adopted standards used in local rehabilitation programs. Rehabilitation shall include reconstruction.

(cc) “Rental new construction project” means funds are provided to develop a specific multifamily project on a specific site by a specific developer.

(dd) “Rental rehabilitation and/or acquisition program” means funds are provided to a city or county to administer a program to assist owners of multi-unit rental housing that is in need of rehabilitation as defined in 8201(y) or to assist the purchase and rehabilitation of multi-unit rental housing that is in need of rehabilitation. No one property assisted through this program shall receive more than 40 percent of the activity amount.

(ee) “Rental rehabilitation and/or acquisition projects” means funds are provided to acquire a specific rental housing project, to rehabilitate a specific project without any transfer of ownership, or to both acquire and rehabilitate a specific project.

(ff) “Rural area” means the same as defined in Section 50199.21 of the Health and Safety Code.

(gg) “Set up” means all of the funding conditions required by HUD and the Department have been met and the State Recipient, Developer or CHDO is ready to establish a project-specific account in the federal disbursement and information system.

(hh) “Set-aside” means HOME funds, which are designated to be used for a specific purpose necessary to meet any statutory or regulatory requirement.

(ii) “State Recipient” means a city or county, which is designated to receive an award of HOME funds from the Department.

(jj) “Tenant-based rental assistance program” means funds are provided to a city or county to administer a program to provide rent subsidies to eligible households. State

Recipients who administer a tenant-based rental assistance program are eligible only for administrative funds to reimburse expenses eligible under 24 CFR Section 92.207 of the federal HOME regulations.

(kk) “Tribally Designated Housing Entity” The terms ‘tribally designated housing entity’ and ‘housing entity’ have the following meaning:

(1) EXISTING Indian Housing Authority (IHA) - With respect to any Indian tribe that has not taken action under subparagraph (B) (2), and for which an IHA--

(i) was established for purposes of the United States Housing Act of 1937 before the date of the enactment of ~~this Act~~ the Native American Housing assistance and Self-Determination Act of 1996 (NAHASDA) that meets the requirements under the United States Housing Act of 1937,

(ii) is acting upon such date of enactment as the Indian housing authority for the tribe, and

(iii) is not an Indian tribe for purposes of ~~this Act~~ NAHASDA, the terms mean such Indian housing authority.

(2) OTHER ENTITIES- With respect to any Indian tribe that, pursuant to ~~this Act~~ NAHASDA, authorizes an entity other than the tribal government to receive grant amounts and provide assistance under ~~this Act~~ NAHASDA, for affordable housing for Indians, which entity is established--

(i) by exercise of the power of self-government of one or more Indian tribes independent of State law, or

(ii) by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska, the terms mean such entity.

(3) ESTABLISHMENT- A tribally designated housing entity may be authorized or established by one or more Indian tribes to act on behalf of each such tribe authorizing or establishing the housing entity.

(ll) “Consolidated plan” means the plan submitted and approved in accordance with 24 CFR part 91.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.2, 92.102(b)(2) and 982.401; and Sections 17920.3, 18007, 50079.5, 50105 and 50199.21, Health and Safety Code.

§ 8204. Eligible Applicant.

(a) In order to be eligible to apply for HOME funds, the applicant shall be a Developer, city or county, or a nonprofit corporation that has been certified as a CHDO by the Department pursuant to Section 8204.1.

(1) Cities and counties shall comply with the following:

(A) A city may only apply for funding for activities within its incorporated boundaries;

(B) A county may only apply for funding for activities within its unincorporated areas;

(C) A city or county applicant shall not have been designated as a participating jurisdiction, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding for the federal fiscal year for which the NOFA is issued, and

(D) A city or county applicant must demonstrate to the Department's satisfaction that it has:

(i) staff available or has committed to hiring staff able to operate a local HOME program and oversee the work of an administrative subcontractor, if any;

(ii) resolved any audit finding(s), for prior Department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,

(iii) provided a self-certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and

(iv) provided documentation satisfactory to the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report.

(2) A CHDO applicant shall comply with the following:

(A) have received the Department's certification to serve the jurisdiction in which the project is located;

(B) be eligible to apply for activities located in cities and counties which have not been designated as participating jurisdictions by HUD, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding from the federal fiscal year for which the NOFA was issued; and

(C) The CHDO must demonstrate to the Department's satisfaction that it has:

(i) resolved any audit findings for prior Department or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,

(ii) provided a self-certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs, and

(iii) provided documentation satisfactory to the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report; and

(D) provide evidence that the CHDO fulfills at least one of the following roles:

(i) sole project developer;

- (ii) sole owner; or
- (iii) sole general partner.

(3) Developer applicants shall comply with the following:

~~(A) A Developer has not and will not apply for HOME program activity funds from a State Recipient or CHDO for that calendar year.~~

~~(B) (A)The Developer is not applying as a CHDO.~~

~~(C) (B)Funding for a Developer is only allowed if it the type of project or jurisdiction is addressed in the Department's approved Consolidated Plan. Projects on Indian Reservations and Native American Lands do not have to meet State Housing Element law.~~

~~(D) (C) For housing projects on Indian Reservations and Native American Lands as defined in Section 8201(y) a Developer must be a Native American Entity or a co-owner with a Tribally Designated Housing Native American Entity. The Department must include Indian Reservations and Native American Lands in its Consolidated Plan before it can fund any housing projects on such lands as referenced in 24 CFR 92.201(b)(5).~~

~~(E) (D) A Developer project activity must be located in the State of California in a city or county which has not been designated as participating jurisdictions by HUD, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding from the federal fiscal year for which the NOFA was issued; and~~

~~(F) (E)A Native American Entity may apply as a Developer for a project activity within its tribal boundaries or within the boundaries of another Tribe. Project activities may be proposed on Tribally owned lands outside the jurisdiction of Tribal boundaries on land owned by the Tribe. A project activity must be located in the State of California in a city or county which has not been designated as participating jurisdictions by HUD, or included as part of an urban county, as defined in 24 CFR Section 570.3(ee), or included as part of a consortium, as defined in 24 CFR Section 92.101, for HOME funding from the federal fiscal year for which the NOFA was issued; and~~

~~(G) (F) A Developer applicant must demonstrate to the Department's satisfaction that it has:~~

~~(i) resolved any audit finding(s), for prior Department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made,~~

~~(ii) provided a self- certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs.~~

(b) An applicant with one or more current State HOME contracts for which the expenditure deadline established in the contract(s) has not yet passed shall be ineligible to apply for a program activity unless the applicant has expended at least fifty percent (50%) of the aggregate total of program funds originally awarded.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.201(b)(1), 92.201(b)(3)(i), 92.201(b)(5), 92.300(b), 92.504(a) and 570.3; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

§ 8205. Use of Funds.

(a) Eligible activities by cities, counties and CHDOs for use of HOME funds shall be one or more of the following:

- (1) first-time homebuyer programs, as defined in Section 8201;
- (2) owner-occupied rehabilitation programs, as defined in Section 8201;
- (3) rental rehabilitation and/or acquisition programs, as defined in Section 8201;
- (4) tenant-based rental assistance programs, as defined in Section 8201;
- (5) rental new construction projects, as defined in Section 8201;
- (6) rental rehabilitation and/or acquisition projects, as defined in Section 8201;
- (7) first-time homebuyer projects, as defined in Section 8201.

(b) Eligible activities by Developers for use of HOME funds shall be one or more of the following:

- (1) rental rehabilitation and/or acquisition projects, as defined in Section 8201(ee);
- (2) rental new construction projects, as defined in Section 8201(cc);
- (3) first-time homebuyer projects developed on Native American Lands as defined in Section 8201(o).

(b)(c) HOME funds for cities, counties and CHDOs, shall only be used to pay for eligible costs as described in 24 CFR Sections 92.206 through 92.209.

(1) All HOME assistance shall be in the form of loans, except for funds used for the activities listed in subsections (2) and (3).

(A) Loans financed from the CHDO set-aside pursuant to 24 CFR Section 92.300(a)(1) shall comply with the financing provisions as required for the following activities:

- (i) for land acquisition for first-time homebuyer projects shall bear zero interest.
- (ii) Loans to first-time homebuyers shall bear a simple interest rate of 3 percent per annum, computed from the date the Deed of Trust is recorded on the property. Interest and payments shall be deferred for the term of the loan. Commencing on the 11th anniversary of the recordation date, an amount equal to 10 percent of the accrued interest shall be forgiven each year, so that on the 20th anniversary of the recordation

date, all interest will have been forgiven if the borrower is in compliance with the requirements stated in the Department's loan documents.

(iii) Loans to rental projects shall bear a simple interest rate of 3 percent. An interest rate of less than 3% may also be permitted by the Department for projects receiving tax credits if necessary to prevent tax credit losses from exceeding the amount of equity invested in the project.

(B) Loans financed from CHDO proceeds pursuant to Section 8206.1(c) shall comply with the following financing provisions as required for the following activities:

(i) Loans assisting first-time homebuyers and homeowners whose homes are being rehabilitated shall bear simple interest rates ranging from 0 to 3 percent per annum, and interest and payments shall be deferred for the term of the loan. The CHDO may forgive some or all of the accrued interest.

(ii) Loans made by CHDOs for rental projects shall bear a simple interest rate of 3 percent. An interest rate of less than 3% may also be permitted by the Department for projects receiving tax credits if necessary to prevent tax credit losses from exceeding the amount of equity invested in the project.

(C) Loans made by State Recipients shall comply with the financing provisions as required for the following activities:

(i) Loans assisting first-time homebuyers and homeowners whose homes are being rehabilitated shall bear simple interest rates ranging from 0 to 3 percent per annum, and interest and payments shall be deferred for the term of the loan. The State Recipient may forgive some or all of the accrued interest.

(ii) Loans made by State Recipients for rental projects shall bear simple interest rates of 3 percent. An interest rate of less than 3% may also be permitted by the Department for projects receiving tax credits if necessary to prevent tax credit losses from exceeding the amount of equity invested in the project.

(2) Funds used for the following shall be provided in the form of a grant:

(A) funds used for tenant based rental assistance, as described in 24 CFR Section 92.209,

(B) relocation payments,

(C) funds necessary to provide the difference between work that is customarily performed and the minimally-required work necessary, using the least cost alternative, to comply with federal lead-based paint regulations in HOME-funded rehabilitation of owner-occupied housing or acquisition of housing for first-time homebuyers, and

(D) funds used for administrative costs eligible pursuant to 24 CFR Sections 92.206(d)(6), 92.206(f)(2), 92.207 and 92.208.

(3) In rehabilitation activities performed as part of a First-time homebuyer program or Owner-occupied rehabilitation program as defined in Section 8201, if necessary to complete the project when the total of all project indebtedness equals or exceeds the

projected after-rehabilitation appraised value, HOME funds may be provided in the form of a grant in an amount of up to 25 percent of the applicable HUD per-unit subsidy limit established pursuant to 24 CFR 92.250(a). This grant amount is in addition to any grant funds provided pursuant to subsection (b)(2).

(4) HOME funds may be used to pay the actual costs of administering a local program as described in 24 CFR Section 92.207. The amount of HOME funds used by a State Recipient or CHDO for administrative expenses shall be limited to the amount specified in the NOFA issued by the Department pursuant to Section 8210.

(5) Costs must be necessary and must be consistent with the lowest reasonable cost taking into consideration a project's scope and area.

(6) If a State Recipient or a CHDO has received a grant for administrative costs described in 24 CFR Section 92.206(d)(6) or 92.206(f)(2), the State Recipient or CHDO shall not charge, nor shall it permit its employees or contractors to charge, any fees, or otherwise seek reimbursement for those costs.

(7) In the event that a project is not completed, or a project completion report is not submitted to the Department for the project, a State Recipient or Developer shall repay funds granted for rehabilitation work performed pursuant to subsection (3), relocation payments, lead-based paint work, and administrative costs pursuant to 24 CFR Sections 92.206(d)(6) and 92.206(f)(2), and a CHDO shall repay funds granted for rehabilitation work performed pursuant to subsection (3), relocation payments and lead-based paint work.

~~(e)(d)~~ A CHDO may request that up to ten percent of the CHDO's project-specific funds be made available for loans pursuant to 24 CFR Section 92.301.

~~(d)(e)~~ Pursuant to 24 CFR Section 92.208, up to five percent of the total amount of funds made available by HUD to the Department for any funding cycle may be used to pay for the operating expenses of CHDOs with which the Department has entered into standard agreements.

~~(e)(f)~~ HOME funds shall not be used to pay for prohibited activities or costs described in 24 CFR Section 92.214.

(g) Under the Department's administered HOME program, any funding to a Developer will be in the form of a loan.

(h) HOME funds for Developers shall only be used to pay for eligible costs as described in 24 CFR Sections 92.206.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR part 40; 24 CFR Sections 92.206, 92.301, 92.353 and 92.355; and 42 USC 12742.

§ 8206. Matching Contributions.

- (a) Except as noted in subsections (a)(1), (a)(2), and (a)(4) below, State Recipients, Developers and CHDOs shall contribute matching funds as required in subsection (b).
- (1) If the matching contribution requirements of 24 CFR Section 92.218 are waived or modified by Congress or are modified by HUD pursuant to 24 CFR Section 92.222, the Department shall waive or modify the matching contribution requirements of subsection (b) for funds affected by the federal action.
- (2) If the Department identifies other eligible sources of match that can be used to meet part or all of the matching contribution requirements of 24 CFR Section 92.218, the Department shall modify the matching contribution requirements of subsection (b) to the extent possible for funds affected.
- (3) Modified matching contribution requirements for each funding cycle as provided for in subsections (a)(1) and (a)(2) shall be provided in the NOFA issued by the Department pursuant to Section 8210 unless such matching requirements are waived or modified by HUD after issuance of a NOFA. In that case, the Department shall notify State Recipients, Developers and CHDOs of the modification of matching contribution requirements through written notice.
- (4) HOME funds used for administrative and planning costs pursuant to 24 CFR Section 92.207 and CHDO operating expenses pursuant to 24 CFR Section 92.208 shall not be required to be matched.
- (b) State Recipients, Developers and CHDOs shall provide matching contributions as required by 24 CFR Sections 92.218, 92.219, 92.220, and 92.221.
- (c) Documentation that the matching contribution requirements have been met shall be subject to verification by the Department.
- (d) If matching contributions are provided in the form of affordable housing that is not HOME-assisted pursuant to 24 CFR Section 92.219(b), the State Recipient, Developer or CHDO shall establish a procedure to monitor these projects and ensure continued compliance with the requirements contained in 24 CFR Section 92.219(b).
- (e) Contributions which shall not be considered as HOME matching contributions are those described in 24 CFR Section 92.220(b).

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.218, 92.219, 92.220, 92.221, 92.222, 92.252 and 92.254; and Sections 50896 and 50896.1, Health and Safety Code.

§ 8208. Affordability Requirements. (a) In order to qualify under these regulations for funding as an affordable rental housing project, the project shall meet the periods of affordability specified in the following table, and shall comply with the other requirements of 24 CFR Sections 92.252, 92,255 and 92.258.

Amount of HOME	Activity Assisted	Minimum Period of Affordability in Years
Less than \$15,000 per unit	Rehabilitation of existing rental housing	10 years
\$15,000 to \$40,000	Rehabilitation of existing rental housing	15 years
More than \$40,000	Rehabilitation of existing rental housing	20 years
Any dollar amount	Acquisition and	55 years <u>for cities, counties, Developers and CHDOs. 50 years for development on Native American Lands as defined by Section 8201 (y)(1).</u>
	Rehabilitation, Acquisition	
	and or New construction of rental housing	

(b) Rent levels shall be restricted for the period of affordability set forth above at the lesser of the rent level permitted pursuant to 24 C.F.R. Section 92.252 or another rent level expressed as a percentage of area median income approved by the Department. Exceptions to this requirement may be granted for units receiving HUD Section 8 or other similar rental assistance, or where the project's continued fiscal integrity is in jeopardy due to factors that could not be reasonably foreseen.

(c) Homeownership units assisted with HOME funds shall meet the requirements of 24 CFR sections 92.254, 92.255 and 92.258. Except for owner-occupied units being rehabilitated with HOME funds, all assistance shall be made available only to first-time homebuyers.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Sections 92.252, 92.254, 92.255, 92.257, 92.258, 201.10, 203.18, 234.27, 813.102 and 888.111; Section 6932, Government Code; and Sections 50896 and 50896.1, Health and Safety Code.

§ 8210. Application Process.

- (a) Within a funding cycle, the Department shall issue one or more NOFAs.
- (b) Eligible applicants, defined as those that comply with the provisions in Section 8204, may submit only one application in response to a NOFA.
- (c) Applications from CHDOs shall propose only activities that are eligible to qualify as CHDO set-aside activities pursuant to 24 CFR Section 92.300(a).
- (d) The NOFA shall specify, among other things, the maximum amount of program or project funds available to a State Recipient or Developer or CHDO under the NOFA, the activities eligible pursuant to the NOFA, the time frame for submittal of applications, the application requirements pursuant to Section 8211, the allocation of rating points pursuant to Section 8212, the matching contribution requirements pursuant to Section 8206, the value of voluntary labor as determined by HUD pursuant to 24 CFR Section 92.220(a)(8), any prohibitions on uses of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.
- (e) The Department shall only consider applications that are complete, as defined by Section 8211(b), and contain all the information required by Section 8211(c).
- (f) If funds are disencumbered pursuant to Section 8218, made available due to an unexecuted standard agreement or made available by HUD pursuant to 24 CFR Section 92.451, the Department may make such funds available to (1) the next highest-ranked unfunded or partially-funded application from the most recent award of funds if the applicant can demonstrate that a proposed activity can be successfully implemented and executed, or (2) through the next published NOFA pursuant to subsection (a).
- (g) 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 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Sections 570.3(ee) and 92.451; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

§ 8211. Application Requirements/Form.

(a) Application shall be made on a form made available by the Department that requests the information required by these regulations.

(b) An application shall be deemed complete when the Department is able to determine from the information provided whether the application is eligible for rating pursuant to the requirements of Section 8212(a).

(c) All applications shall be required to contain the following:

(1) identification of the applicant;

(2) information on the proposed activity(ies);

(3) information adequate to determine whether the applicant is eligible, in accordance with Sections 8204 and 8204.1;

(4) information adequate to determine whether the activity is eligible, in accordance with Sections 8205 and 8210(c);

(5) information indicating whether the applicant or any member of its program team or project team has any unresolved audit findings or has been suspended or debarred from participation in any federal or State housing or community development program;

(6) information on any pending litigation affecting the applicant's ability to carry out the activity;

(7) identification of any administrative subcontractor;

(8) a certification that the applicant will comply with State and federal requirements;

(9) a resolution by the governing board of the applicant authorizing the application and the execution of all required documents;

(10) information adequate to determine the experience of the applicant with other federal, State or local housing or community development programs;

(11) identification of all members of the program team or project team;

(12) information on sources and amounts of matching contributions, in accordance with Section 8206, and sources and amounts of leverage, as defined in Section 8201.

(d) In addition to the information required by subsection (c), applications proposing programs shall be required to contain the following:

(1) information on which member of the program team is responsible for accomplishing key administrative tasks;

(2) information on the projected administrative budget and sources of funds to pay for the costs of administering the program;

(3) information adequate to determine the experience of the applicant in administering a program to assist the same type of activity proposed in the application;

(4) a description of how the applicant proposes to use HOME funds;

(5) a copy of the guidelines to be used by the applicant for administering the program in compliance with State and federal requirements;

- (6) information adequate to determine the feasibility of the program;
- (e) In addition to the information required by subsection (c), applications proposing projects shall be required to contain the following:
 - (1) a description of the roles, financial structure and all legal relationships of the applicant, developer, owner(s), managing general partner, administrative subcontractor and all other partners in the construction project;
 - (2) information adequate to determine the experience of the applicant, developer, owner and managing general partner in developing the same type of subsidized project as proposed by the application;
 - (3) information adequate to determine the readiness of the project to proceed;
 - (4) information adequate to determine the feasibility of the proposed project.
 - i. For applications proposing rental projects, adequate information shall include the following:
 - (A) information adequate to determine the financial feasibility of the project in accordance with Section 8212(d)(3) and the Uniform Multifamily Regulations (commencing with Section 8300) and state and federal HOME requirements;
 - (B) for applications proposing rental new construction projects, a market study, property appraisal, and a Phase I/Phase II environmental site assessment shall be submitted as requested by the Department.
 - (a) The market study must demonstrate whether sufficient demand exists in the market area to support the proposed project at the projected rents.
 - (b) The property appraisal must determine the value of the land upon which the proposed project will be developed. If the land is leased, the appraisal must include the fair market value of the lease payments.
 - (c) The Phase I/Phase II environmental site assessment must demonstrate whether the property is free from severe adverse environmental conditions.
 - (d) For projects located on Native American Lands as defined in Section 8201(y)(1), appraisals and a Phase I environmental site assessments will be provided based on the data available.
 - (C) For applications proposing rental rehabilitation and/or acquisition projects, a market study, property appraisal, and asbestos and mold assessments shall be submitted as requested by the Department. In addition, if an application proposes rehabilitation and/or acquisition of a building constructed prior to January 1, 1978, a lead-based paint assessment shall be submitted.
 - (a) The market study must demonstrate whether sufficient demand exists in the market area to support the proposed project at the projected rents.
 - (b) The property appraisal must determine the value of the existing project. If the land is leased, the appraisal must include the fair market value of the lease payments.

(c) The asbestos, mold, and lead-based paint assessments must demonstrate whether the project is free from severe adverse environmental conditions.

(d) For projects located on Native American Lands as defined in Section 8201(y)(1), appraisals and a Phase I environmental site assessments will be provided based on the data available.

ii. For applications proposing first-time homebuyer projects, adequate information shall include the following:

(A) information adequate to determine the ability of the project to meet federal and State HOME requirements, including a copy of the guidelines to be used by the applicant for administering the project in compliance with State and federal requirements;

(B) for applications proposing first-time homebuyer new construction projects, an analysis of comparable properties in the market area, a property appraisal, and a Phase I/Phase II environmental site assessment shall be submitted as requested by the Department.

(a) The analysis of comparable properties must demonstrate whether the project's proposed home sales prices are supported by the market.

(b) The property appraisal must determine the value of the land upon which the proposed project will be developed. If the land is leased, the appraisal must include the fair market value of the lease payments.

(c) The Phase I/Phase II environmental site assessment must demonstrate whether the property is free from severe adverse environmental conditions.

(d) For projects located on Native American Lands as defined in Section 8201 (y)(1), appraisals and a Phase I environmental site assessments will be provided based on the data available.

(C) For applications proposing first-time homebuyer rehabilitation projects, an analysis of comparable properties in the market area, a property appraisal, and asbestos and mold assessments shall be submitted as requested by the Department. In addition, if an application proposes to acquire or rehabilitate a building constructed prior to January 1, 1978, a lead-based paint assessment shall be submitted.

(a) The analysis of comparable properties must demonstrate whether the project's proposed home sales prices are supported by the market.

(b) The property appraisal must determine the value of the existing project. If the land is leased, the appraisal must include the fair market value of the lease payments.

(c) The asbestos, mold, and lead-based paint assessments must demonstrate whether the project is free from severe adverse environmental conditions.

(d) For projects located on Native American Lands as defined in Section 8201 (y)(1), appraisals and a Phase I environmental site assessments will be provided based on the data available.

iii. Any document prepared pursuant to subsections (i)(B) and (C) or (ii)(B) and (C) shall be prepared by an individual or firm which:

(A) has the appropriate license, when deemed necessary by the Department, and knowledge and experience necessary to competently prepare the document;

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

(C) communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property, and the value and condition of the subject property; and

(D) is an independent third party having no identity of interest with the applicant, the partners of the applicant, the intended partners of the applicant, or with the general contractor.

(5) if applicant is a CHDO, the procedures to ensure the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1).

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Sections 92.1, 92.201, 92.203, 92.205, 92.206, 92.209, 92.214(a), 92.252, 92.254, 92.300(a)(1), 92.351, 92.352, 92.355 and 92.500; Section 65588, Government Code; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

§ 8212. Application Selection and Evaluation.

(a) Applications shall not be considered for funding unless the application is received within the time frames specified in the NOFA and demonstrates that all of the following conditions exist:

(1) the applicant is eligible pursuant to Section 8204 and 8204.1;

(2) the applicant proposes at least one eligible activity and the proposed uses for the HOME funds are eligible pursuant to Sections 8205 and 8210(c);

(3) the application is complete pursuant to Section 8211;

(4) the total amount of funds requested for both administration and activity-specific costs does not exceed the funding allocation limit which is stated in the NOFA and any allowed increase to this limit pursuant to Section 8217;

(5) if applicant is a CHDO, includes procedures ensuring the CHDO's effective project control of activities assisted with HOME funds pursuant to 24 CFR Section 92.300(a)(1); and

(6) for applications proposing projects involving acquisition of rental housing, acquisition and rehabilitation of rental housing, rehabilitation of rental housing, construction of rental housing, or construction of housing for first-time homebuyers, the application demonstrates:

(A) that the project is financially feasible;

(B) site control is obtained pursuant to Section 8303;

(C) that there are no pending lawsuits that will prevent implementation of the project, as proposed;

(7) for applications proposing rental activities, the application contains documentation demonstrating that the project either complies with or is exempt from Article 34 of the California Constitution.

(b) Each application considered for funding shall first be rated using the criteria contained in this subsection and either the criteria in subsection (c) for program applications or the criteria listed in subsection (d) for project applications. Maximum possible rating points are listed after each criterion. Program applications, rental project applications, and first-time homebuyer project applications shall be rated and ranked separately. All applications shall be rated on the following:

(1) If the applicant is a city or county, the city or county's adopted housing element is in substantive compliance on the date applications are due to the Department as published in the NOFA. If the applicant is a Developer (which includes a CHDO applying as a Developer,) the city or county's adopted housing element is in substantive compliance on the date applications are due to the Department as published in the NOFA. Newly formed cities that are not required to have an adopted housing element in compliance with general plan law shall receive full points in this category. CHDO projects and projects developed on Native American Lands as defined in Section 8201 (y)(1) shall receive full points in this category. ~~If the applicant is a CHDO or the project is developed on Indian Reservations or Native American Lands the CHDO or the project is developed on Indian Reservations or Native American Lands shall receive full points in this category.~~ (50 points)

(2) Whether the application proposes activities within a jurisdiction whose formula allocation is being reallocated by the Department. (50 points)

(3) Whether the application proposes activities in a rural area. (50 points)

(4) Whether the application addresses one or more state objectives, as identified in the Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD. (200 points)

(c) Applications proposing programs shall be evaluated on these additional criteria:

(1) Capability to operate a HOME program, as demonstrated by the following: (up to 250 points).

(A) Performance of the applicant in meeting federal and State HOME requirements specified in this Section in previous State HOME contracts (up to 150 points). For this criterion only, all applicants initially will be credited with 150 points. Applications will then have points deducted for performance problems under previous State HOME contracts.

(i) Applicants who have in the last three contracts, from prior years as defined in the NOFA, not submitted required quarterly, annual, or project completion reports on time will lose up to 50 points; and

(ii) applicants who have not complied with monitoring and contractual requirements identified by the Department in the last 5 years as defined in the NOFA will lose up to 100 points.

(B) Prior experience of the applicant, as measured by implementation of HOME, and/or other local, State or federal affordable housing or community development programs during the most recent seven year period (up to 100 points):

(2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate; and the ratio between the median home sales price and the median household income in the jurisdiction. The NOFA will identify the community need factors that apply to each activity and required source and who will be required to provide the source documentation. (up to 250 points)

(3) Feasibility of the program being applied for, as demonstrated by the degree to which the applicant's program guidelines reflect federal and State requirements, and the following: (up to 100 points)

(A) for first-time homebuyer programs, the number of units which have sold in the city or county over the preceding 12 month period at a price which is affordable, given the proposed HOME assistance, to lower income families;

(B) for rehabilitation of owner-occupied housing and rental housing programs, the number of overcrowded households by tenure and the age of the housing stock by tenure in the city or county, as reflected in U.S. Census data;

(C) for tenant-based rental assistance programs, the overpayment by lower-income renter households as reflected in U.S. Census data.

(d) Applications proposing projects will be evaluated on these additional criteria:

(1) Capability to develop a HOME-assisted project, as demonstrated by the following: (up to 450 points)

(A) Performance of the applicant, developer, owner, and managing general partner in meeting federal and State HOME requirements specified in this section in previous State HOME contracts; (up to 200 points). For this criterion only, all applications will initially be credited with 200 points. Applications will then have points deducted for performance problems under previous State HOME contracts.

(i) applicants, developers, owners, and managing general partners who have in the most recent five-year period as defined in the NOFA, missed deadlines for projects specified in Section 8217 will lose up to 200 points; or applicants who have not submitted required monthly, quarterly program income, annual, or project completion reports on time will lose up to 50 points;

(ii) applicants, developers, owners, and managing general partners who have in the most recent five-year period as defined in the NOFA, made a material misrepresentation of any requirement or fact in an application, project report or other document submitted to the Department including but not limited to that which jeopardizes the Department's investment in a project or places the Department at risk of a monitoring finding will lose up to 200 points; and;

(iii) applicants, owners, and managing general partners who have not complied with monitoring requirements identified by the Department in the last five years will lose up to 100 points.

(B) Prior experience of the applicant, as measured by the implementation of HOME, and/or other local, State or federal affordable housing or community development projects during the most recent seven year period; (up to 50 points)

(C) Prior experience during the most recent five year period of the applicant, developer, owner, and managing general partner in developing the same type of subsidized project, in a manner consistent with the applicable funding source, as is proposed in the application. (up to 200 points)

(2) Community need based on one or more of the following factors: poverty level and overpayment for housing by low-income households and by tenure (i.e., owner or renter), vacancy rates for housing in the jurisdiction by tenure, age of housing stock by tenure in the jurisdiction, numbers and percentages of substandard housing units, overcrowding of housing by tenure in the jurisdiction, and percentages of households that are below poverty level and who are overcrowded and living in substandard housing by tenure, as reflected in U.S. Census data; the numbers of low-income housing units at risk of conversion to market rate and those that actually have converted to market rate and the ratio between the median home sales price and the median household income in the jurisdiction. The determination of poverty levels for scoring purposes for projects on tribal and Native American Lands will be defined as the poverty level in the local jurisdiction where the tribal and Native American Lands are located. The NOFA will identify the community need factors that apply to each activity

and required source and who will be required to provide the source documentation. (up to 250 points)

(3) Feasibility of the project. For rental projects, feasibility will be as demonstrated by compliance with the Uniform Multifamily Regulations (commencing with Section 8300) and State and federal HOME requirements. For first-time homebuyer projects, the Department will evaluate the ability of the proposed project to meet State and federal HOME requirements. This will include but is not limited to an evaluation of the adequacy of the proposed development budget, the demonstrated market for the project, including both the assisted units, and the non-assisted units, if any, and the affordability of the project, taking into account other available financing and HOME income requirements. Projects will also earn points based on having the greatest percent of assisted units. Point values for each factor will be identified in the NOFA. (up to 200 points)

(4) Readiness of the project, as demonstrated by the project development plan, status of local governmental approvals, design progress and financing commitments. Project development plans, status of local governmental approvals and design process may be accepted from Tribal Planning Departments for projects on Native American Lands, as defined in Section 8201 (y)(1). Point values for each factor will be identified in the NOFA. (up to 300 points)

(5) Applications must receive at least 930 points in subsections (b) and (d) in order to be eligible for funding.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR part 91, 24 CFR Sections 92.50, 92.102, 92.204, 92.205, 92.206, 92.218, 92.250, 92.451 and 92.453; and Section 50896.3, Health and Safety Code.

§ 8212.2. Uniform Multifamily, Underwriting and Program Rules.

(a) Subchapter 19 of Title 25, Division 1, Chapter 7 (commencing with Section 8300) is hereby incorporated by reference into this subchapter and shall apply to rental housing developments receiving assistance under the HOME Program.

(b) In the event of a conflict between the provisions of Subchapter 19 and this Subchapter 17, the provisions of this Subchapter 17 shall prevail.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code.

Reference: Sections 50675.1, 50675.2, 50675.4, 50675.5, 50675.6, 50675.7, 50675.8, Health and Safety Code.

§ 8212.3. Deep Targeting Funds.

(a) For purposes of this section, the term “deep targeting funds” means additional funds awarded to rental projects to provide rents below the 50% of area median income rent level as set forth in the NOFA.

(b) In addition to the maximum award amount set forth in a NOFA, and subject to the provisions of this section, a NOFA may make deep targeting funds available for the purpose of reducing project rents through reduction or elimination of non-public agency debt that requires debt service payments.

(c) The NOFA shall establish the reduced rent levels required in order for a project to be eligible to receive deep targeting funds.

(d) As a result of the reduction in mandatory debt service, all rents shall be maintained at the area median income levels proposed in the HOME application for a minimum of 55 years for cities, counties, Developers and CHDOs and 50 years for Developers that include a Native American Entity as a co-owner/co-applicant (for projects on Indian reservations or Native American Lands) as defined in Section 8201 (y)(1). pursuant to a HOME regulatory agreement or a regulatory agreement held by another government financing agency.

(e) The following projects shall not be eligible to receive deep targeting funds.

(i) Projects proposing to use nine percent Low Income Housing Tax Credits.

(ii) Rental rehabilitation projects that are not requesting HOME funds for acquisition.

(f) Deep targeting funds shall be allocated only to rental housing projects ranking high enough to be funded pursuant to 8212(b). If the demand for deep targeting funds exceeds the amount made available in the NOFA, projects will be rated and ranked for deep targeting funds as follows:

(i) The higher the percentage of HOME units restricted at or below the deep targeting rent levels set in the NOFA, the more points that will be awarded; and

- (ii) The lower the average rent expressed as a percentage of area median income, the more points that will be awarded.
- (iii) If a project requesting deep targeting funds does not score high enough on the deep targeting rating factors to receive deep targeting funds, the project will be evaluated pursuant to Section 8212(b) using the rents that are proposed at the regular maximum HOME loan amount, rather than the deep targeting HOME loan amount.
- (g) Applicants requesting funds for deep targeting shall submit two sets of documents as requested in the application. One set of documents shall reflect rent levels and project financials if the project is funded at the regular maximum HOME funding level, and one set of documents shall reflect rent levels and project financials if the project is funded with deep targeting funds. Except for differences attributable to reduced nonpublic agency debt, the two project scenarios shall be the same. Although the project unit mix may change with deep targeting funds, the total number of units in the project shall not change. Among the HOME-assisted units, no more than four different rent levels expressed as a percentage of area median income shall be used for each bedroom size.
- (h) In rating and ranking applications pursuant to subdivision (f), projects will only be compared to projects in counties with similar HOME median income limits as set forth in the NOFA. Initially, fifty percent of the available deep targeting funds shall be allocated to projects in counties with HOME income limits lower than the identified median income limit in the NOFA, and fifty-percent of the funds shall be awarded to projects in counties with HOME income limits higher than the identified median income limit in the NOFA. Unallocated funds from one group will be made available to the other group.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.201, 92.206, 92.218, 92.252 and 92.257; and Sections 50896 and 50896.1, Health and Safety Code.

§ 8213. Conditional Reservation of Funds.

(a) The Department will rate, rank and issue conditional reservations of funds for applications based on its review of all of the eligible activities for which funds are requested in the application. Rating scores for each of the factors set forth in Section 8212(b), (c) and (d) will be totaled by the Department. Those project applications which receive the minimum required number of points, as specified in 8212(d), and all eligible program applications will receive conditional reservations in the order in which they are ranked within their respective allocations pursuant to 8212.1 with the higher point score

funded first. Those applications which are to be funded wholly from any set-aside, because all proposed activities are eligible to qualify as set-aside activities, shall be funded first based on their score within their respective allocations. Once the set-aside has been achieved, all remaining applications will be funded based on their score relative to all other remaining applications in their respective allocations.

~~(b) Only one project on Indian reservations or Native American Lands, as defined in Section 8201 (y)(1) and (2) is guaranteed HOME program funding in each NOFA. Developers with a project located on Indian reservations or Native American Lands shall be rated and ranked against each other; The top ranked project, after first meeting the HOME program requirements for funding CHDO and rural projects, will be awarded HOME funds. Developers that are proposing a project on Indian Reservations or Native American Lands must be an Native American Entity or an entity having co-owned by co-ownership with a Tribally Designated Housing Native American Entity. The rating and ranking of applicants (for projects on Indian reservations or Native American Lands) will not be subject to meeting any minimum point score. The Developer projects that are not top ranked (for projects on Indian reservations or Native American Lands) will be competitively rated against cities, counties, CHDOs and other Developers (for projects not on Indian reservations and Native American Lands) pursuant to 8213(a).~~

~~(b)(c)~~ In the case of a tied score, the application demonstrating the highest poverty level shall receive the higher ranking.

~~(e)(d)~~ In the event there are insufficient funds to fund an applicant's whole program, the applicant may be offered the amount of funds available, provided it is sufficient to complete a portion of the application which, if evaluated separately, would have been awarded funds.

~~(d)(e)~~ Applications shall be funded subject to the availability of funds.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Section 92.150; and Sections 50896, 50896.1 and 50896.3, Health and Safety Code.

§ 8214. Legal Documents.

(a) Standard Agreement

(1) The written document required by 24 CFR Section 92.504 shall be a contract known as a standard agreement. The Department shall enter into a standard agreement with each State Recipient, Developer and CHDO once the State Recipient and CHDO have demonstrated compliance with the requirements in their award letter.

- (2) This standard agreement shall reserve monies from the HOME fund in an amount approved for funding by the Department pursuant to Section 8213.
- (3) The standard agreement shall require compliance with those provisions of 24 CFR part 92 which are applicable to State Recipients, Developers and CHDOs and with this subchapter.
- (4) The standard agreement shall include all the items specified in 24 CFR Section 92.504 and the following provisions:
- (A) the granting and cancellation of HOME funds to the State Recipient, Developer or CHDO;
 - (B) State Recipient, Developer and CHDO responsibilities for local HOME program operation, including time frames and milestones as set forth in the application;
 - (C) reporting requirements, including performance reports, pursuant to Section 8216 and the recordkeeping requirements as necessary to ensure compliance with 24 CFR Sections 92.508 and 92.509;
 - (D) requirements related to ensuring that the HOME assistance to the project is not more than is necessary to provide affordable housing;
 - (E) project set-up and fund disbursement requirements, including provision of evidence that projects are ready to be set up and provisions for receipt, use, and accounting of HOME funds pursuant to Sections 8215 and 8217;
 - (F) provisions for securing loans and grants pursuant to subdivision (b);
 - (G) the actions to be taken to mitigate environmental effects in accordance with the requirements set forth in 24 CFR Section 92.352;
 - (H) requirements that the State Recipient, Developer or CHDO shall not discriminate or permit discrimination on the basis of race, color, religion, ancestry, sex, age, national origin, marital status, and mental or physical handicap, in accordance with state law and shall comply with the federal requirements as set forth in 24 CFR Sections 92.350 and 92.351;
 - (I) requirements that prior to the issuance of a state designation number which is necessary to access the federal disbursement and information system, the State Recipient, Developer or CHDO shall comply with the requirements of 24 CFR Sections 92.500 and 92.502;
 - (J) remedies available to the Department in the event of a violation, breach, or default of the standard agreement, including repayment of all costs of enforcement;
 - (K) requirements that the State Recipient, Developer or CHDO permit the Department, HUD or their designated agents and employees the right to inspect the project or projects and all books, records, and documents maintained by the State Recipient, Developer or CHDO in connection with the local HOME program;
 - (L) requirements that the State Recipient, Developer or CHDO submit audits pursuant to 24 CFR Section 92.506;

(M) any other terms and conditions as required by local, state, or federal law, which are necessary to ensure compliance with the requirements of the Act.

(b) Security and Regulatory Documents

(1) Except when the State Recipient will be retaining funds in a local account, all loans shall be evidenced by a promissory note payable to the Department in the principal amount of the loan and stating terms consistent with the requirements of HOME. The promissory note shall be secured by a deed of trust naming the Department as beneficiary, or by other security acceptable to the Department. Such security shall be executed prior to the disbursement of funds.

(2) If the State Recipient will be retaining funds in a local account, all loans shall be evidenced by a promissory note payable to the State Recipient or Native American Entity in the principal amount of the loan. The promissory note shall be secured by a deed of trust naming the State Recipient as the beneficiary. All loans made to State Recipients by the Department for use on projects which the State Recipient owns shall be evidenced by a promissory note payable to the Department in accordance with subsection (b)(1).

(3) The Department or State Recipient shall ensure that restrictions are recorded or imposed against the project to ensure affordability requirements pursuant to Section 8208.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR part 92; 24 CFR Sections 92.303, 92.350, 92.352, 92.500, 92.502, 92.504, 92.508 and 92.509; and Sections 35800, 50896 and 50896.1, Health and Safety Code.

§ 8215. Project Set-Up and Disbursement of Funds.

(a) Upon notification from the State Recipient, Developer or CHDO that it is ready to set up each project in the federal disbursement and information system:

(1) The State Recipient, Developer or CHDO shall submit to the Department the project set-up report required by 24 CFR Section 92.502 (b), prior to the first disbursement requests.

(2) The Department shall verify that the project is in compliance with the applicable conditions contained in the standard agreement.

(3) Upon verification of subsections (a)(1) and (a)(2), the Department shall set up the project with HUD in the federal disbursement and information system.

(b) HOME funds shall be drawn down by electronic fund transfer from the HOME fund for a project that has been set up pursuant to subsection (a).

(1) The Department shall make telephonic requests for disbursement directly to the federal disbursement and information system after receipt of a certification of the payment request. The original certification shall remain in the permanent project file.

(2) The Department shall withhold disbursements in the event the State Recipient, Developer or CHDO fails to comply with the terms of the standard agreement, these regulations and/or the requirements of 24 CFR part 92.

(c) Funds drawn from the HOME fund shall be expended for eligible costs within 15 days.

(1) Interest earned on HOME funds drawn from the federal disbursement and information system and remaining in the local account no more than 15 days shall be retained in the local account and used for eligible HOME costs.

(2) Unused funds, including interest earned on funds beyond the 15 days, shall be returned to the Department to be returned to the federal disbursement and information system.

(d) All HOME funds in the local account shall be disbursed in accordance with 24 CFR Section 92.502(c)(3).

(e) Within 60 days of receipt of the final drawdown request for a project, the State Recipient, Developer or CHDO shall provide to the Department the project completion report required by 24 CFR Section 92.502(e). If the State Recipient, Developer or CHDO does not comply with this requirement within the 60-day time period, the Department shall suspend further project set-ups or disbursements for the State Recipient, Developer or CHDO until a project completion report is received and accepted by the federal disbursement and information system.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Section 92.502; and Sections 50896 and 50896.1, Health and Safety Code.

§ 8216. Reporting and Recordkeeping.

(a) Reporting Requirements

(1) Upon execution of the standard agreement required by Section 8214, and no later than 10 days following the last day of the month, recipients of project funds shall submit a monthly status report and, for projects currently under construction, a monthly labor compliance certification. The State Recipient, Developer or CHDO shall continue to

submit the monthly status report until the final project completion report is accepted in the federal disbursement and information system. The monthly status report shall include the following:

- (A) information to determine the progress of efforts to comply with environmental and labor standards requirements;
- (B) information to determine the progress of efforts to obtain all necessary project financing;
- (C) information to determine the progress of efforts to obtain required local government approvals for the project;
- (D) information to determine whether there have been any changes in project site control;
- (E) information to determine the timeline for completion of the project;
- (F) current contact information for individuals or firms overseeing the development of the project.

(2) Upon execution of the standard agreement and, at a minimum, no later than 30 days after the end of each calendar quarter until the final project completion report is accepted in the federal disbursement and information system, State Recipients and CHDOs with HOME funds for program activities shall submit to the Department a performance report which shall include the following information:

- (A) activities undertaken to implement the local program and to meet milestones contained in the standard agreement;
- (B) anticipated activities in the next quarter to implement the local program and to meet milestones contained in the standard agreement;
- (C) problems in implementing the program or complaints received during the reporting period and actions taken to resolve such problems and complaints;
- (D) financial information related to expenditures of HOME funds and activity in the local account;
- (E) any additional information which may be requested by the Department to ensure compliance with federal requirements.

(3) State Recipients, Developers, CHDOs, or other borrowers shall submit to the Department an annual performance report. The annual performance report shall cover the period from July 1 to June 30 and shall be submitted on July 1 of each year and not later than July 31 of each year pursuant to Section 8214(a)(4)(C). The report shall include information and documentation which is necessary to meet record keeping and reporting requirements pursuant to 24 CFR Section 92.508(b).

(b) Fiscal and Programmatic Requirements

(1) State Recipients, Developers and CHDOs shall maintain records as described in 24 CFR Sections 92.508(a)(2), (a)(3), (a)(5), and (a)(6). These records shall be retained for the periods of time specified in 24 CFR Section 92.508(c). State Recipients, Developers

and CHDOs shall make all program records available to the Department for inspection and review and shall provide all program records to the Department upon request.

(2) At any time during the operation of the local HOME program, the Department may perform or cause to be performed a financial audit pursuant to 24 CFR Section 92.506 of any and all phases of program operations. At the Department's request, the State Recipient or CHDO or other borrower shall provide, at its own expense, a financial audit prepared by a certified public accountant.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Sections 92.250, 92.352, 92.354, 92.504, 92.506 and 92.508; and Sections 50896 and 50896.1, Health and Safety Code.

§ 8217. Project Deadlines.

(a) For purposes of this section, the following terms have the following meanings:

(1) "Contract" means the standard agreement required by section 8214. The contract shall designate each activity listed therein as either a "project" or a "program".

(2) "Contractor" means a CHDO or State Recipient or Developer that has executed a contract with the Department.

(3) "Expenditure" means the Department has received a valid disbursement request for the funds.

(4) "Performance points" means those points made available pursuant to Section 8212(d)(1)(A).

(5) "Project" means an activity for which, at the time of application, there is an identified site and an identified borrower. No substitution of the site shall be permitted after the submission of an application to the Department.

(6) "Program" means an activity for which, at the time of application, there is no identified site or no identified borrower.

(b) Project Deadlines

(1) All projects shall meet the following deadlines:

(A) the State Recipient, Developer or CHDO shall obtain all necessary permanent project financing, including the permanent financing for the required period of affordability within 12 months of the date of the award letter;

(B) all projects shall be set up in the federal disbursement and information system no later than 17 months after the date of the award letter;

(C) all construction loan closings shall occur no later than 20 months after the date of the award letter, with the exception of self-help projects, for which construction loan

closings must occur no later than 23 months after the date of the award letter. Construction loan closing is defined as the recordation of all construction financing loan documents, including, as applicable, the HOME deed of trust and HOME regulatory agreement;

(D) all projects shall be completed within 36 months of the date of the award letter, as evidenced by the filing of a Notice of Completion; and

(E) all expenditures shall be made within 40 months of the date of the award letter.

(2) If a project fails to meet one or more of these timeframes outlined in (1) above, the next application for a project involving the applicant, developer, owner or managing general partner submitted in response to a NOFA having an application deadline after the missed project deadline/s shall receive a performance penalty pursuant to section 8212(d)(1)(A).

(3) If a project fails to meet three (3) of the timeframes outlined in (1) above the contractor shall be:

(A) ineligible to apply for a project in any NOFA having an application deadline following the third missed deadline until the project is completed, occupancy is obtained and all expenditures are made and all necessary HOME funds are drawn; and

(B) the next application for a project involving the applicant, developer, owner, or managing general partner shall receive a performance penalty.

(c) An exception to the project requirements of this section may be requested and provided at the Department's sole discretion when it is determined that violation was clearly outside of the control of all of the following parties: the applicant, developer, owner, managing general partner.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.

Reference: 24 CFR Sections 92.454(a)(2) and 92.500(d); and Sections 50896 and 50896.1, Health and Safety Code.

§ 8218. Cancellation and Termination.

(a) Funding allocations to state recipients, Developers and CHDOs shall be canceled or reduced and standard agreements shall be terminated or amended by the department under any one of the following conditions:

(1) State recipients, Developers or CHDOs are not in compliance with the requirements of HOME or the standard agreement;

- (2) implementation of the local HOME program is not in compliance with the time frames and goals stated in the state recipient's, Developer's or CHDO's application and standard agreement;
 - (3) special conditions for funding as stated in the standard agreement have not been fulfilled; or
 - (4) the department has been notified by HUD of a reduction in or elimination of the department's allocation of HOME funds.
- (b) At least fourteen days prior to the effective date of the termination or amendment of a standard agreement, the department shall provide written notice to state recipients, Developers and CHDOs of its intent to cancel or amend the funding allocation.
 - (c) Upon notification by the department that the funding allocation is canceled or reduced and the standard agreement is terminated or amended, the state recipient, Developer or CHDO shall:
 - (1) complete all work affected by the cancellation or reduction that is in progress; and
 - (2) terminate any other activities that were to be paid for with HOME funds.
 - (d) After all required repayments have been returned to C/MI, any funds remaining in the state recipient's local account shall be made available in accordance with section 8210(g) of this subchapter.

Note: Authority cited: Sections 50406 and 50896.3(b), Health and Safety Code.
Reference: 24 CFR Sections 92.504(c)(1)(x) and 92.504(c)(3)(vii); and Sections 50896 and 50896.1, Health and Safety Code.