

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE**

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December 6, 2016

MEMORANDUM FOR: ALL POTENTIAL APPLICANTS

FROM: Laura A. Whittall-Scherfee, Deputy Director
Division of Financial Assistance

**SUBJECT: NOTICE OF FUNDING AVAILABILITY – \$26 MILLION
HOME INVESTMENT PARTNERSHIPS PROGRAM**

The Department of Housing and Community Development (HCD) is pleased to announce a Notice of Funding Availability (NOFA) for the HOME Investment Partnerships Program (HOME). This NOFA is for rental projects, first-time homebuyer (FTHB) projects, and program activities. A minimum of \$26,000,000 is available for this NOFA. Additional funding may become available from disencumbrances of existing contracts.

Note: This NOFA will be subject to the HOME Program regulations approved by the Office of Administrative Law on October 31, 2016 and having an effective date of January 1, 2017. This means NOFA applicants should prepare their applications based on the HOME regulations that are effective on January 1, 2017 shown in the California Code of Regulations Title 25, Division 1, Chapter 7, Subchapter 17 State Home Investment Partnership Act Program, which for convenience are shown at the following link that will be available by December 12th, 2016:

[State Home Regulations 2016.doc](#) (**Adobe PDF**) (**New**)

The following table indicates important application due dates:

DUE DATES	DATE
2016 NOFA Availability Date	December 6, 2016
HOME Application Release Date	December 6, 2016
Application Due Date	February 2, 2017 by 5:00 p.m.
Award Announcement	May 2017

The 2016 December NOFA will be available for download from the HCD website at <http://www.hcd.ca.gov/financial-assistance/home-investment-partnerships-program/>.

SUBJECT: HOME NOFA 2016 - \$26 MILLION

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The application deadline is Thursday, February 2, 2017 by 5:00 p.m. for the 2016 HOME NOFA.

Applications must be delivered via private courier or U.S. Mail and must be received by the HOME Program no later than 5:00 p.m., February 2, 2017. Personal deliveries will no longer be accepted, per HCD policy. **Any applications received after 5:00 p.m. will not be accepted.**

HCD will also schedule three (3) application training workshops throughout the state beginning in December 2016 for HOME potential applicants. A notice of the workshop schedule was sent out in November 2016 using HCD's HOME mailing list. You can [subscribe](#) to the HOME mailing list (and other HCD news categories) for notices on the NOFA workshops and other important HOME Program information or call (916) 263-2771. The workshop will cover the following areas:

- What's new in the 2016 HOME NOFA?
- Provide guidance and instruction to complete the application.
- Review changes to the application, activities and/or rating and ranking criteria.
- Answer any questions about the application process.

If you have any questions on the 2016 HOME NOFA and/or HOME workshops, please contact the following HOME staff:

Programs		
Craig Morrow, NOFA Programs Manager	(916) 263-4847	HOMENOFA@hcd.ca.gov
Janette Schaake, NOFA Programs HCDR II	(916) 263-2331	
Projects		
Craig Morrow, NOFA Project Manager	(916) 263-4847	HOMENOFA@hcd.ca.gov
Stoyan Elitzin, NOFA Projects HCDR II	(916) 263-1622	

Attachment

HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)

2016 Notice of Funding Availability



**State of California
Governor Edmund G. Brown Jr.**

**Ben Metcalf, Director
Department of Housing and Community Development**

**Laura Whittall-Scherfee, Deputy Director
Division of Financial Assistance**

2020 West El Camino Avenue, Suite 650, Sacramento, CA 95833
Telephone: (916) 263-2771 / Fax: (916) 263-3394
Website: <http://www.hcd.ca.gov/financial-assistance>
NOFA Section Email: HOMENOFA@hcd.ca.gov

December 2016

2016 HOME Program and Project NOFA Application Workshops

Applicants for HOME Funds are strongly encouraged to attend the applicable workshops to gain information critical for preparing a competitive application, which will be discussed at the workshops. If you are planning to attend, please follow the registration process outlined below.

To register for the workshops, please send an e-mail to HOMENOFA@hcd.ca.gov with workshop Registration” in the subject line, stating the names of those attending, the workshop they plan to attend, and a contact phone number.

First-Time Homebuyer (FTHB) Subdivision Projects Conference Call

Applicants interested in submitting a **FTHB subdivision project application** will receive NOFA training by conference call; please send an e-mail to HOMENOFA@hcd.ca.gov

Rental Project Workshop

This workshop will cover Rental New Construction and Rental Rehabilitation (with or without Acquisition) projects only. If you have questions regarding any of these workshops, send an e-mail to HOMENOFA@hcd.ca.gov

<u>Date/Time</u>	<u>Location</u>
9:00 a.m. – 2:00 p.m.: NOFA	
December 19, 2016	HCD Headquarters 2020 W. El Camino Avenue, Room 402(a) Sacramento, CA 95833

Program Activities Workshops

These workshops will cover First-Time Homebuyer, Owner-Occupied Rehabilitation and Tenant-Based Rental Assistance Program Activities. If you have questions regarding any of these workshops, send an e-mail to HOMENOFA@hcd.ca.gov

<u>Date/Time</u>	<u>Location</u>
9:00 a.m. – 2:00 p.m.: NOFA	
December 12, 2016	HCD Headquarters 2020 W. El Camino Avenue, Room 402(a) Sacramento, CA 95833
December 15, 2016	Tulare Ag Commissioners office 4437 S Laspina Tulare, CA 93274

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- APPENDIX G:** [CHDO Annual Recertification Requirements](#)
- APPENDIX H:** [Community Need Data and Scoring — \(Excel\) and \(Word\)](#)
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**NOTICE OF FUNDING AVAILABILITY (NOFA)
HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM
December 6, 2016**

Anticipated Funding Level: A minimum of \$26,000,000

I. OVERVIEW

A. Key Changes from the 2015 NOFA

Changes from the 2015 NOFA are marked in bold. All regulatory references are to the State HOME Program regulations unless otherwise noted.

Projects

- **Developers, including Native American Entities, are now eligible “Applicants”. Developers may submit an application directly to HCD (under the HCD administered HOME program) to develop or rehabilitate projects using HOME funds within a HOME approved jurisdiction. A Developer of a project shall not act as administrative subcontractor for the activity. Any funding to a Developer will be in the form of a loan.**
- **“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.**
- **Eligible activities by Developers for use of HOME funds shall be one or more of the following:**
 - (1) rental rehabilitation with or without acquisition projects, as defined in Section 8201(ee);**
 - (2) rental new construction projects, as defined in Section 8201(cc).**
 - (3) first-time homebuyer projects, as defined in Section 8201 (o).**
- **Beginning with the 2016 HOME NOFA, funds will be available for one project on Indian reservations or Native American Lands with each NOFA.**

Note: If funding for a project on Indian Reservations or Native American lands is not fully awarded, funds will be reallocated to fund additional project activities.

- **HOME rental projects developed on Indian reservations or Native American Lands funded by the 2016 NOFA may use 9 percent Low Income Housing Tax Credits as a source of funds.**

Note: Projects, including projects developed on Indian reservations or Native American Lands, can receive the maximum amount of HOME funds per project (up to \$4.5M to \$5.5M) only with 4 percent Low Income Housing Tax Credits as a source of funds.

- **Periods of affordability for projects developed on Indian Reservations or Native American Lands will be for 50 years or as needed to meet the regulatory requirements.**

Program Activities

- **CLARIFICATION – HUD Program Income regulations require that all HOME Program Income funds held at the local level be expended before any HOME funds can be disbursed. Although spending down PI is not a threshold requirement, it is important that applicants read and apply all aspects as part of the planning process and funding strategy prior to completion and submittal of the application.**

B. Application Due Date

The application is due by 5:00 p.m. on **February 2, 2017**. The application materials for all activities are available on the State HOME website at www.hcd.ca.gov/fa/home. Please review these documents carefully before submitting an application.

Applicants and other interested parties are encouraged to attend one of the upcoming training workshops scheduled in December, 2016. These workshops will cover HOME requirements and information needed to submit a successful application.

HOME funds are available to eligible local governments (State Recipients), Developers and nonprofit organizations certified with HCD as Community Housing Development Organizations (CHDOs).

Per Section 8212.1(a) of the State HOME Program regulations, funding made available by this NOFA will be allocated as follows:

- 40 percent for program activities
- 55 percent for rental projects
- 5 percent for first-time homebuyer (FTHB) projects

Per Section 8213(c), 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 those funds are sufficient to complete a portion of the application which, if evaluated separately, would have been awarded funds. If the amount of funding available is insufficient, the available funds may be allocated to feasible applications in other allocations.

C. Allocation of Funds

In addition to the allocation requirements described in Sections A and B above, the total amount made available under the NOFA will be allocated pursuant to the State regulations as follows:

- Per Section 92.300(a)(1) of the HOME Final Rule, a minimum of 15 percent will be reserved for HCD-certified CHDOs.
- Per Section 8212.1(e) of the HOME State Regulations, a minimum of 50 percent will be reserved for rural areas.

In addition, \$2 million of the funds available for rental new construction projects will be made available to augment the funding amounts for rental new construction projects with Deep Targeting; for more information, see Section X.

D. Eligible Activities

HOME funds may be used for the following activities:

Rental Projects

- New Construction with or without acquisition.
- Rental Rehabilitation with or without acquisition.

First-Time Homebuyer (FTHB) Projects

New construction or acquisition/rehabilitation/conversion to develop homes on a specified site or sites to be sold to first-time homebuyers. The entire HOME investment must be converted to mortgage assistance for the first-time homebuyers when the units are sold to eligible homebuyers.

Program Activities

- FTHB – Acquisition-only Down Payment Assistance
- FTHB – Acquisition with Rehabilitation
- FTHB – Infill New Construction. This activity is eligible only if the application clearly documents the availability of grant funds or building sites currently owned by the Applicant or Developer for projects with costs that exceed 100 percent of appraised value. Applicants must have a committed source of development subsidy.

It is critical that the application clearly provides the required documentation. For example, if the source is a development grant, provide a firm letter of commitment from the funding source for this project. HCD will make award determinations based solely on the contents of the application; no opportunity will be provided to submit additional information or documentation after the application is submitted.

- Owner-Occupied Housing Rehabilitation (OOR) Program
- Tenant-Based Rental Assistance (TBRA) Program

For more information on HOME eligible activities, see Section V.

Note: The combination of federal and State HOME regulations applicable to mobile and manufactured housing is very complex. Applicants considering these activities are encouraged to discuss eligibility with HOME staff prior to submitting an application.

E. Funding Announcements and Standard Agreements

HCD intends to send award letters by May 2017 for all successful applicants. Standard Agreements for program activities and for projects will be sent in July and August. Drawdowns for project contracts will be executed by the State in Fall, 2018. If a standard agreement isn't ready for a construction loan closing then the borrower and other construction lenders of any other party associated with the project must rely on the issuance of an estoppel letter that will be issued (if requested) at the construction loan closing stage.

Updates on planned awards and contract status will be provided through the HCD List e-mail system. To be added to this list, go to <http://www.hcd.ca.gov/hcd-subscribe.html>, scroll down to the HOME Program and select the email alert lists you wish to receive.

F. Applicant Responsibility

If awarded funding, the awardee must file regular reports each month (for projects) or each quarter for all other activities. The awardee is responsible for disclosing all changes to the activities from those disclosed in the HOME application. Such changes could include, but are not limited to, higher costs, the need for additional funds, the intent to apply for additional funds, changes in project financing, cost savings, environmental issues, project timeline changes, development team member changes, applicant Authorized Representative and/or applicant contact changes, changes in relationship among members of the development team, utility allowances, and availability of utility rebates. HCD may request documentation of the change as necessary to analyze the significance of the change. Failure to report accurately may result in a loss of points in future HOME funding rounds.

Note: Monthly reports for 2016 project awardees must be filed starting the month the Standard Agreement begins and are due no later than **the tenth day of the following month and the tenth day of each month thereafter until the project is completed.**

II. Regulatory Authority

HOME Regulations and NOFA Suspension/Amendment: All applications are governed by the State HOME Regulations as amended (most recently in 2016) and the federal Final HOME Rule. If federal or State statutes or regulations governing the program or funding are modified by Congress, the Department of Housing and Urban Development (HUD), the State Legislature, or HCD prior to completion of work, the changes may become effective immediately and apply to funded activities.

HCD reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA. If such action occurs, HCD will notify interested parties.

Note: Any inconsistencies between the NOFA and the state HOME regulations will be resolved in favor of the regulations.

This NOFA does not include the text of all applicable regulations that may be important to particular projects. For proper completion of the application, HCD encourages potential applicants to consult the State and federal HOME Program regulations, and other federal cross-cutting regulations (referred to in Subpart H of the federal HOME regulations). Rental project applicants should also consult the State Uniform Multifamily Regulations (UMRs), which apply to all HOME-funded rental projects.

Note: *HCD is proposing changes to the UMRs that, if adopted, might affect projects receiving HOME awards.*

Several of the terms used in the HOME Program have specific meanings defined by federal and/or State HOME regulations. When reviewing this NOFA and the application forms, carefully review the regulations for definitions and terms. State HOME definitions are found in Section 8201 & 8217 of the State HOME Regulations. For your convenience, hyperlinks to the HOME Regulations and UMRs are provided below:

State HOME Regulations
[State Home Regulations 2016.doc](#)

State Uniform Multifamily Regulations
<http://www.hcd.ca.gov/fa/home/UniformMultifamilyRegsFinal071110.pdf>

State Uniform Multifamily Regulations proposed changes
<http://www.hcd.ca.gov/financial-assistance/multifamilyregs.html>

Federal HOME Regulations
[eCFR — Code of Federal Regulations](#)

NOFA staff is available to discuss HOME program requirements and provide individual technical assistance to applicants preparing an application.

III. Application Procedures, Final Filing Deadline and Award Announcements

- A. Applications must be delivered via private courier or U.S. Mail and must be received by the HOME program no later than 5:00 p.m. on February 2, 2017. **Personal deliveries are not accepted.**

Applicants must submit separate application forms in separate binders for each activity (e.g., Project 1, Project 2); however, Program Activities must be combined together in one 3-ring binder as noted below. In addition, rental project applicants must submit one copy of their completed Universal Application Form (excel format), HOME Supplement, and all Project Development Plan (PDP) attachments on a PC-compatible Compact Disc (CD). Please unprotect electronic worksheets for HCD use when preparing project reports. The application, attachments, and major sections of an application binder **MUST** contain tabbed dividers.

Examples:

1. An applicant wishes to apply for a rental project and for a FTHB project. The applicant must submit two separate binders and a PC-compatible CD as follows:
 - a) the original Universal Rental Project Application Form, the HOME Supplement, and all attachments for the rental project (binder 1);
 - b) one copy of the Universal Application Form, the HOME Supplement, and all PDP Attachments on CD, and;
 - c) the original FTHB Project Application Part A, Part B, and all attachments for the FTHB project (binder 2).

2. An applicant wishes to apply for a rental project and for both FTHB and TBRA Program Activity funds. The applicant submits two separate binders and a CD as follows:
 - a) the original Universal Rental Project Application Form, the HOME Supplement, and all attachments for the rental project, (binder 1);
 - b) one copy of the Universal Application Form, the HOME Supplement, and all PDP Attachments on CD; and
 - c) the original of the Program Activities Application Part A, Part B, and all attachments for the FTHB and TBRA activities (binder 2).

Note: Separate and complete Part B Application forms must be submitted for each Program Activity for which you are applying for, such as, FTHB and TBRA.

Rental new construction project applicants requesting HOME funds for “Deep Targeting” are also required to submit a second set of documents pertaining to their project if it were to receive additional funds for Deep Targeting (for more information, see Section X).

Applications must be delivered via private courier or U.S. Mail and must be received by the HOME Program no later than **5:00 p.m.** on **February 2, 2017**. Please contact HCD if delivery is not completed by fault of the private courier/US Mail. **Personal deliveries are not accepted.** The delivery address is:

HCD of Housing & Community Development
Division of Financial Assistance
HOME Program
2020 West El Camino Avenue, 5th floor
Executive Suite – Reception Area
Sacramento, CA 95833

Applications that do not meet the filing deadline requirements will not be eligible for funding. Applications must be on HCD forms and cannot be altered or modified by the Applicant.

B. CHDO Certification

New applicants and currently certified CHDOs with certifications that will expire before February 2, 2017 must submit a complete Application for CHDO Certification with all exhibits and attachments by **January 10, 2017**.

The Application for CHDO Certification is available at http://www.hcd.ca.gov/fa/home/Certification_CHDO.html

- Annual Recertification for Existing CHDOs: HUD requires HCD to conduct a modified re-certification process each time new CHDO set-aside funding is awarded.

If you are an existing CHDO last certified prior to January 1, 2016, you must submit the documents set forth in NOFA Appendix G with your HOME application by the application deadline of **February 2, 2017**.

For assistance with the CHDO Certification Process, please contact Muri Christine Bartkovsky at (916) 263-1176 or mbartkovsky@hcd.ca.gov.

C. Application Form

After the application deadline, HOME staff may contact applicants for assistance in locating specific information in the application. In addition, HCD may, in its sole discretion, request an applicant to supply clarifying information, provided that such information does not affect the competitive rating and ranking of the application. This clarifying information may be used by HCD to make a determination of whether the project is financially feasible pursuant to Section 8212(a)(6)(a) and complete pursuant to Section 8211 of the state HOME regulations. No information, whether written or oral, will be accepted if the provision of such information would result in a competitive rating point advantage to the applicant or a competitive rating point disadvantage to other applicants. In the event an applicant's completed HOME application form or exhibit is incomplete or incorrect, HOME will consider all information within the application to determine if there is sufficient information to assign the score.

D. Rental Project Scoring, Notification, and Appeal Process

Rental Project application scoring is expected to be completed by **March 17, 2017**. E-mails will be sent to the authorized representative and contact person listed in the application describing the scores and specific facts upon which those scores were determined. Applicants will have five working days to submit an appeal to HCD e-mail address provided. A final determination will be provided within five working days from receipt of the appeal.

IV. Eligible Applicants

To be eligible, the applicant must be a city or county, developer, or a nonprofit corporation that has been certified as a CHDO by HCD.

A. For Cities and Counties:

- that have not been designated as Participating Jurisdictions by HUD;
- that are not participants in an urban county agreement with a county that is a HUD Participating Jurisdiction;
- that are not participants in a HOME consortium; and
- where projects are located in the city's incorporated area or the county's unincorporated area.

B. For CHDOs:

- only housing that is "Owned, Developed or Sponsored" by an eligible CHDO qualifies for the CHDO set-aside funds;
- "Owned, Developed and Sponsored" are defined at Section 92.300 of the Final Rule as:

Owner: The CHDO is required to own (in fee simple absolute or long-term ground lease meeting the requirements of UMR Section 8316) the HOME project during development and throughout the period of affordability. As owner, the CHDO is required to oversee all aspects of the development process. In instances where the CHDO lacks developer capacity, the CHDO may own the project and hire a qualified project manager or contract with a development contractor to oversee all aspects of development. This option is available to CHDOs having experience and capacity to own and operate affordable rental housing, but lack the experience or capacity to develop the project. This option is NOT available where the project is owned by a partnership entity (see Sponsor paragraph below)

Developer: The CHDO may act as developer if the CHDO owns (in fee simple absolute or long-term ground lease) the HOME project. As developer, the CHDO must be in sole charge of all aspects of the development process, including obtaining zoning and other approvals, securing financing, selecting contractors, overseeing work progress and determining reasonableness of costs. The CHDO must own the project during development and for multi-family rental projects, throughout the period of affordability. This option is NOT available where the project is owned by a partnership entity (see Sponsor).

Prior to publication of the 2013 Final Rule, CHDOs were allowed to act as developer in projects where the CHDO had no long-term ownership interest if the CHDO had a contractual relationship with the project owner (i.e. a Development Services Agreement) to develop the project. This option is no longer available.

Sponsor: The 2013 Final Rule provides two definitions of “Sponsor” of HOME-assisted rental housing:

1. A CHDO “sponsors” a project when the property is “owned” or “developed” by:
 - a. An affiliated subsidiary of the CHDO, which is wholly owned by the CHDO;
 - b. A limited partnership in which the CHDO or its wholly owned affiliated subsidiary is the sole general partner; or
 - c. A limited liability company in which the CHDO or its wholly owned affiliated subsidiary is the sole managing member.

Note: Subsection “b” is most commonly used in tax credit projects, which applies to most, but not necessarily all of the multi-family rental project applications received by HCD.

2. A CHDO may “sponsor” a project in situations where the CHDO owns (in fee simple absolute) and develops the housing and agrees to convey the housing to a different private non-profit organization at a predetermined point in time after completion of the development. The non-profit to which the project will be conveyed does not need to be a CHDO, but must be identified and approved by

HCD prior to commitment of HOME funds. Additionally, this non-profit cannot be created by a governmental entity. If for any reason the project is not transferred to this non-profit, the CHDO remains liable for the HOME funds and the project for the term of the affordability period.

C. For Developers:

- Developer applicants 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 will be awarded HOME funds. Developers that are proposing a project on Indian reservations or Native American lands must be a Native American Entity or is an entity having co-ownership with a 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 is not applying as a CHDO.

D. Eligible Applicants

HOME funds may be used to assist cities, counties, developers and CHDOs consistent with applicable State and federal requirements.

Eligible jurisdictions for FY 2016 are listed in Appendix A of this NOFA. If a city or county is not listed in Appendix A, but you believe it should be, submit a copy of the consortium or urban county agreement for your county indicating that your city or county is not a participant for FY 2016 consortium or urban county funding by **January 10, 2017**.

Pursuant to State HOME regulation section 8217, State Recipients, developers and CHDOs that may be held out from applying in a particular funding round because they have a HOME project that has missed three deadlines, may request that this penalty be waived if it can be demonstrated that one or more missed deadlines were clearly beyond the control of all of the following parties: applicant, developer, owner, and managing general partner.

To discuss, contact Laura Bateman, Loan Closing Manager at (916) 263-1302. In order to receive a decision on your waiver request before the HOME application deadline, it is recommended that you submit your written waiver request by **January 10, 2017**.

E. Minimum Expenditure Requirement for Program Activities (50 Percent Rule)

Pursuant to State HOME regulation section 8204(b), applicants with current HOME Program Activities contracts or with Program Activities awards from the last HOME Program NOFA, are eligible to apply for HOME Program Activities funds only if they have expended, by the application due date of **February 2, 2017**, at least 50 percent of the total of funds originally awarded. Potential applicants with no open HOME Program Activities contracts are not affected by this rule. A current HOME contract is

one where the expenditure deadline has not yet occurred by **February 2, 2017** (i.e., generally a contract with numbering starting, “14-HOME” or “15-HOME” and ending with a unique 4- or 5-digit contract number).

Note: If an earlier contract has been extended and has not yet reached its extended expenditure deadline, it will count towards this 50 percent Rule.

"Expended" funds are the total of all valid draws (or, for TBRA, Project Setup Reports) received by HCD by the application deadline. Additionally, for FTHB and OOR, a valid draw is limited to the amount needed for reimbursement of actual expenses for work that has been completed (“work completed”). Work completed varies by activity, as follows:

- FTHB activities: escrow has closed;
- Owner-Occupied Rehabilitation (OOR) activities: the amount expended is the amount of construction/rehabilitation payments that were made for work completed and inspected;
- Tenant-Based Rental Assistance (TBRA) activities: the amount expended is the rental assistance amount multiplied by the number of months in the individual tenants’ TBRA rental assistance agreements; to the extent those funds are available in existing TBRA grants.

F. Compliance with OMB A-133 Audit Submission Requirements

To be eligible for funding, the applicant must be in compliance with the submission requirements of the OMB A-133 Audit report. Single Audit reporting packages are due nine months after the entity’s fiscal year end under 2 CFR 200.512. to State of California Controller (SCO). For most California entities, the reporting package is due March 31st of each fiscal year. Entities with approved extensions on file must submit their reporting package by the due date indicated in their approved extension letter. HCD will make the determination on the status of A-133 Audit compliance as of February 2, 2017 by consultation with SCO. Jurisdictions that are exempt from filing an A-133 Audit because the level of federal funds is below the federal threshold must, in addition to notifying SCO, also submit with their HOME application a copy of the letter to SCO notifying their exempt status. For additional information, see Section XXIII.

G. Over-the Counter (OTC) Program Funds

Note: The OTC funding availability is possible only if the amount requested by all applicants is far lower than historical levels as determined by HCD. HCD will notify all parties through the “HCD List” process if there will be an OTC Program funding opportunity.

V. Eligible Activities

To be eligible for funding, an application must be for one of the following types of projects and/or program activities. Rental and homebuyer projects with multiple sites must have common ownership and financing.

Projects

1. Rental New Construction Project – Funds provided to develop a specific multifamily project on a specific site by a specific developer. Rental New Construction projects may be with or without acquisition.

Rental Rehabilitation With or Without Acquisition – Funds must be provided to rehabilitate a specific rental project without a transfer of ownership or to both acquire and rehabilitate a specific rental project.

Per Section 92.205(a) of the federal HOME regulations “acquisition” is generally thought of as an arms-length transfer of real property between unrelated parties. Therefore, a project is eligible as “rehabilitation with acquisition project” only if there will be an acquisition of real property, not just a change in partnership or ownership interests.

Projects involving only acquisition (where no rehabilitation is being done) are not eligible.

Physical Needs Assessment - Pursuant to 24 CFR 92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes and rehabilitation standards at the time of project completion. Projects involving rehabilitation must do sufficient rehabilitation to ensure the long-term viability of these projects. Pursuant to UMR 8309(b)(2), HCD requires that rental rehabilitation project applicants must submit a “third party” physical needs assessment (PNA) prior to receiving an award.

NOTE: Readiness points are awarded for submitting an acceptable PNA with the application. Failure to include the PNA will likely result in a lower competitive score.

A. Rehabilitation Projects Where HOME is the Only Source of Financing

Inspections - In rehabilitation projects where HOME is the only source of financing (typically rehabilitation projects with no acquisition involved), inspections of progress must be conducted and formally documented prior to draw down of HOME funds. CHDOs and developers must hire a third-party construction inspector for this purpose. State Recipient projects may use the jurisdiction’s own staff to perform these inspections.

Capitalized Operating and Replacement Reserves

Pursuant to Section 92.214 of the federal HOME regulations, HOME funds cannot be used to pay the initial deposits to the operating and replacement reserves required under UMR Sections 8308 and 8309. Therefore, in a project where HOME is the only source of financing, or if other lenders/equity partners will not pay for these costs, they must be paid by the developer.

Annual Monitoring Fees for Multifamily Projects

Pursuant to the HOME Final Rule, Section 92.214(b)(1)(i), *Rental Compliance Monitoring Fees*, Participating Jurisdictions, such as the State HOME Program, may charge fees to cover the cost of ongoing monitoring and physical inspection of HOME projects during the state period of affordability. The State HOME Program will charge these fees as described in this NOFA.

With few exceptions, the fee structure for HOME projects will be the same as for projects which are restructured under AB 1699 guidelines.

For Developer and CHDO Projects

Beginning with projects funded under the 2014 HOME NOFA, HCD shall charge an annual monitoring fee according to the following schedule:

Number of Units	2015	2016	2017
12 or fewer	\$5,000	\$5,150	\$5,300
13 to 60	\$10,000	\$10,300	\$10,600
More than 60	\$15,000	\$15,450	\$15,900

To cover inflation, this fee schedule shall increase by 3 percent per year for each year after 2014, unless HCD determines that its monitoring costs are increasing a lower rate. Financial assumptions in the HOME application should be based on the rate that will be effective at the time of initial occupancy.

Annual monitoring fees are mandatory payments. For the first 30 years, annual interest payments will be required in the amount of 0.42 percent of the outstanding principal loan balance. The annual payment amount for the next 25 years (20 years for development on Native American Lands as defined by Section 8201 [y][1]) will be set by HCD in year 30, and will be the minimum amount necessary to cover HCD's monitoring costs. Unpaid principal and accrued/deferred interest will be due at the end of the loan term. Payments shall be made annually, with the first payment due on the last day of the project's fiscal year immediately following project completion. The first payment shall be prorated based upon the total number of days after completion falling within the first fiscal year.

Lump sum payment made from development funds is not allowed for HOME projects. Payments made must be pursuant to the regulatory agreement.

For State Recipient Projects

Cities and counties may also charge annual monitoring fees to cover the ongoing cost of monitoring and conducting physical inspections for State Recipient projects provided that:

1. The monitoring fee charged may be less than, but shall not exceed the amount charged for state CHDO projects;
2. The monitoring fee shall be specifically stated in the State Recipient's loan documents; and
3. An amount equal to 10 percent of the monitoring fee, which is charged to a State Recipient project, will be paid by the State Recipient to HCD to cover HCD's costs of monitoring the State Recipient's rental project compliance activities.

2. Homebuyer Projects

The development of homes to be sold to first-time homebuyers. HOME funds can be used for:

- a) Construction financing of new construction or acquisition/rehabilitation/conversion projects, with 100 percent of the HOME investment rolling over to permanent financing and being used to provide mortgage assistance to first-time homebuyers; or
- b) Homebuyer mortgage assistance only in a project that is being constructed or acquired and rehabilitated with other funds.

Program Activities

State Recipients may apply for any number of HOME-eligible program activities set forth below. CHDOs are eligible to apply for only FTHB acquisition with rehabilitation and/or infill new construction funds. Applicants must submit program guidelines according to the requirements of the HOME application form and feasibility information for each activity for which they are requesting funds.

Eligible program activities are as follows:

- First-Time Homebuyer (FTHB) Program
 - a. Funds provided to a HOME-eligible city or county to provide loans to homebuyers for acquisition only and/or acquisition with rehabilitation of a modest dwelling the homebuyer selects from the open market, and/or;
 - b. Funds provided to a HOME-eligible CHDO to perform acquisition with rehabilitation activities. To be considered a CHDO-eligible activity the CHDO must assume the role of developer and own the property, completing the rehabilitation of the unit prior to selling the home to an eligible homebuyer, and/or;

- c. Funds provided to a city, county or CHDO to provide assistance for the new construction of dwellings on scattered sites in an existing built-out neighborhood, with no more than four dwellings on each vacant site. Pursuant to National Environmental Policy Act (NEPA) requirements, an Environmental Assessment (EA) will be required if more than four units, regardless of funding source, are developed within 2,000 feet of one another. To be considered a CHDO-eligible activity the CHDO must assume the role of developer, own the property during construction, and sell the home to an eligible homebuyer within nine (9) months of completion. All dwellings must be situated on land held in fee simple, leasehold, or other manner approved in writing by HCD and be affixed on a permanent foundation. Term of the leasehold must be for at least the period of affordability.

Pursuant to State HOME regulation section 8207, the FTHB primary mortgage loan must be fully amortizing and have a fixed interest rate that does not exceed the current market-rate, as established by the 90-day “posted yield” for thirty-year fixed rate loans, as established by Fannie Mae at <https://www.efanniemae.com/sf/refmaterials/hrny/index.jsp> plus 100 basis points. For more information regarding primary loan terms, see Section XIII.

- Owner-Occupied Rehabilitation (OOR) Program

Funds provided to a HOME-eligible city or county to assist owners whose primary residence is in need of repairs, improvements or reconstruction necessary to meet federal, state, or local building codes and correct all health and safety deficiencies.

Effective August 23, 2013 reconstruction means the rebuilding, on the same lot, housing standing on a site, or housing that has been destroyed by natural causes, provided that the HOME funds are committed within twelve (12) months of the date of destruction.

- Tenant-Based Rental Assistance (TBRA) Program

Funds provided to a HOME-eligible city or county to administer a program to provide rent subsidies and/or security deposits to eligible households. The minimum term of rental assistance to an eligible household is six months; however, the tenant must be initially offered a one year lease. The assisted tenant may accept a term of less than one year (minimum six months) after being offered a one year lease. TBRA funds may be used to assist tenants to reside in any HOME-eligible jurisdiction within the county where the TBRA funds were awarded. For example, TBRA funds awarded to the City of Winters can also be used for units located in Woodland, West Sacramento, or the unincorporated areas of Yolo County since all of these jurisdictions are State HOME-eligible within Yolo County, but may not be used in Davis, which is not State HOME-eligible.

VI. Ineligible Uses of Funds

- Per the discretion provided by HUD under Section 92.206(b) of the HOME Final Rule, HCD does not permit the use of HOME funds for refinancing. However, repayment of bridge loans, under certain circumstances, may be eligible. To discuss your situation, contact HCD Staff listed in the NOFA memo.
- Rental Rehabilitation with or without Acquisition programs are ineligible.
- Projects involving only acquisition are ineligible.
- Pursuant to HOME federal Regulation 92.206(a)(4), for rental projects, costs associated with the construction or rehabilitation of laundry facilities and other community facilities which are located in separate buildings containing no residential units are ineligible HOME costs, and cannot be paid for with HOME funds.

Note: In order for space within residential buildings, such as laundry facilities or a community room, to be paid for with HOME funds, that space has to be for the exclusive use of project residents and their guests. It cannot be space available for use by the general public.

- For further ineligible uses of HOME funds, refer to 24 C.F.R. 92.214 of the federal regulations.

If an application is submitted proposing an ineligible use, only that portion of the application proposing eligible uses will be rated and eligible for funds.

VII. Forms of HOME Assistance

A. HOME Loans

HOME assistance shall be in the form of loans to be repaid to local HOME accounts controlled by State Recipients, qualified CHDOs, or the State's HOME account, except for the uses of funds specifically defined under HOME Grants. Loans provided to homebuyers must meet the requirements set forth in Section XIII.

B. HOME Grants

HOME assistance must be provided in the form of a grant for relocation payments, lead-based paint hazard evaluation and reduction activities, and Tenant-Based Rental Assistance. HOME assistance may be provided in the form of a grant for rehabilitation activities performed under a first-time homebuyer or owner-occupied rehabilitation program if necessary to complete the project when the total of all project indebtedness equals or exceeds the projected after-rehabilitation appraised value.

The grant amount for rehabilitation activities is limited to up to 25 percent of the applicable HUD per-unit subsidy limit for the project. This amount is in addition to any grant funds currently permitted for relocation, lead-based paint remediation, and activity delivery costs for the project.

HOME assistance may also be used for Activity Delivery Cost grants. Activity Delivery Costs are further defined by the term “related soft costs” in the HOME Final Rule at 92.206(d), except that customary closing costs for home acquisition activities may be charged either as a loan or part of the 6.5 percent funding for Activity Delivery Costs. Note: Homebuyer Education Costs may be reimbursed through only Activity Delivery Costs and cannot be passed on to the homebuyer. Developers, including Native American Entities, of a project shall not act as an administrative subcontractor for an activity and are not eligible for Administrative or Activity Delivery Costs.

IMPORTANT: All project-related soft costs associated with an owner-occupied project must be included in the 24 percent funding maximum available for Activity Delivery Costs.

HOME funds for Activity Delivery Costs must be drawn down at the same time HOME funds for Activity Costs are drawn down. If the activity is not completed and a Project Completion Report for the full amount drawn down is not filed, all HOME funds for that project, including Activity Delivery Costs, must be repaid to HCD. For FTHB projects, special care should be taken in requesting Activity Delivery funds during the construction phase. If the entire amount of the construction loan should inadvertently not roll over into permanent loans, the proportional amount of Activity Delivery Costs must be repaid to HCD. For more information on Activity Delivery Costs, see Section XII.

C. NEPA Expenses:

To encourage early NEPA environmental compliance, HOME funds may be used to reimburse NEPA expenses incurred by a successful applicant prior to the effective date of the Standard Agreement at the sole discretion of HCD. These expenses must be reasonably necessary for the proposed project and will be paid only after the Standard Agreement is fully executed. NEPA consultants may be chosen using the “small purchase” procurement method (i.e., by use of informal price quotations).

D. Expenses Incurred Prior to Standard Agreement

Project related expenses for NEPA environmental review, architectural and engineering and other professional services incurred within the 24 months prior to the commitment of funds may be reimbursed at the sole discretion of HCD after execution of the State Standard Agreement. On a case-by-case basis, HCD may, in writing, permit reimbursement for other expenses incurred after the date of the award letter and prior to the effective date of the Standard Agreement upon the request of the applicant.

VIII. Minimum and Maximum Amount of HOME Funds Per Project

The minimum amount of HOME funds that must be invested in a project involving rental or homeownership housing is \$1,000 times the number of HOME-assisted units in the project (# of units x \$1,000 = minimum amount of HOME funds). The \$1,000 minimum per unit requirement does not apply to TBRA funds.

The maximum amount of HOME funds invested in a project, including Activity Delivery Costs, shall not exceed the lower of: (1) the per-unit subsidy limits, established by HUD under 24 C.F.R. 92.250; (2) the proportion of HOME-assisted units compared to all units in the project and the square footage of HOME units compared to all other units in the project, pursuant to 92.205(d); and (3) the total amount of eligible costs necessary (when combined with other financing and assistance), to accomplish the following:

- Enable the project as proposed to be developed and to operate in compliance with all HOME requirements, including the subsidy-layering requirement at 92.250. For more information, see HUD's [CPD Notice 98-1](#).
- For rental activities of five or more units, achieve a debt-service coverage ratio in accordance with UMR Section 8310, and adequate cash flow to ensure long-term financial feasibility.
- For the current HUD per-unit subsidy limits, <http://www.hcd.ca.gov/fa/home/homelimits.html>.
- FTHB and OOR activities are subject to the Maximum Purchase Price/After Rehabilitation Value Limits. The current limits can be found at <http://www.hcd.ca.gov/fa/home/homelimits.html>.

Note: Section 92.254(a)(2)(iii) of the HOME Final Rule also allows a request for a higher limit, based on a local market analysis, to be submitted through HCD to HUD, for review. To reduce the frequency of submissions to HUD, HCD will periodically notify jurisdictions through Listserv announcements when requests may be submitted. The applicant may complete the application with a Maximum Purchase Price/After Rehabilitation Value Limit that exceeds their current limit in anticipation of

an approval of a waiver request. The waiver request must be submitted prior to the date of the application approved prior to award. HCD has established a waiver request process outlined in HOME Management Memo #15-01, which can be viewed at, <http://www.hcd.ca.gov/fa/home/mmemo/index.html>.

Pursuant to federal regulations, any one project may receive HOME funds from only one HOME award. This prohibits the combination of awards from a State Recipient and a developer or CHDO on the same project and prevents the combination of awards from more than one HOME NOFA on the same project.

IX. Maximum Application Amount / Combinations Of Activities

Cities, counties and CHDOs may submit only one HOME application pursuant to this NOFA. An application may consist of no more than two activities as follows:

- One rental project and one FTHB project; or
- One rental project, and any combination of eligible program activities; or
- One FTHB project and any combination of eligible program activities except for a FTHB program; or

Separate application forms must be submitted for each project and an additional application form for Program Activities. Each project will be rated and ranked separately.

Developers not applying through a State Recipient may submit only one HOME application pursuant to this NOFA. An application may consist of one activity as follows:

- One rental rehabilitation with or without acquisition project; or
- One rental new construction project ; or
- One FTHB project

Applicants requesting project funding for a rental project consisting of two sites (the maximum pursuant to this NOFA) must be in conformance with UMR Section 8301(o); specifically, both sites must have common ownership, financing, and management.

Where a rental project is located on non-contiguous parcels, all of the parcels shall be governed by similar tenant selection criteria, serve similar tenant populations and have similar rent and income restrictions. Program activities are not site-specific; therefore, these limitations do not apply to them.

Note also that pursuant to 24 CFR 92.250, before committing funds to a project, HCD must evaluate the project in accordance with the UMRs and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

All loan amounts will be verified by a subsidy layering analysis, and loan amounts will be reduced if the amount requested exceeds what is needed. Loans are also subject to the federal per-unit subsidy limits, and individual activity limits, set forth in the following document at <http://www.hcd.ca.gov/fa/home/homelimits.html>.

Note: Regarding maximum HOME loan amounts and available funds for Administration, CHDO Operations and Activity Delivery Costs, applicable to Rental New Construction, Rental Rehabilitation with or without Acquisition, and Homebuyer projects, the loan limits stated below do not include funds for Administration, CHDO Operations, or Activity Delivery. For example, an applicant may request \$4.6 million for a 4 percent tax credit project (i.e., a \$4.5 million loan, and \$50,000 for Administration and \$50,000 for Activity Delivery [for a State Recipient project applicant]). For Administration/CHDO Operations and Activity Delivery amounts, see Sections XI and XII.

Note: all limits apply to the combined amount of funds requested through this NOFA and HOME Program Income.

Rental New Construction Project Loan Limits: \$4,500,000

Prior to the issuance of the award letter, HCD will evaluate the financial feasibility of each project and may, as necessary for project feasibility or to prevent over-subsidizing a project per the UMRs, increase or decrease the HOME loan amount without regard to the limits specified in this section. This also applies to Rental Rehabilitation with or without Acquisition projects.

Deep Targeting: Rental new construction projects requesting funds for Deep Targeting can request up to \$1,000,000 in addition to the maximum application amount for their activity shown above.

Rental Rehabilitation with or without Acquisition Loan Limits

- \$2,000,000, except where the project meets the requirements of either a) or b), below.
- \$4,500,000, if the project meets either of the following requirements:
 - a) 80 percent of all units in the project will be restricted to tenants with household incomes at or below 50 percent of the Area Median Income (AMI) at initial occupancy after rehabilitation, with rents restricted to no more than the low HOME rent level; or
 - b) 80 percent of all units in the project will have project-based rental assistance and the rental assistance contract is renewable.

Homebuyer Project Loan Limits

- Up to \$80,000 per unit for up to a maximum of the lesser of \$2,000,000 or 5 percent of the total amount awarded pursuant to this NOFA.

- This per-unit amount is only for the purpose of calculating the maximum amount to be requested. The federal per-unit subsidy and Maximum Purchase Price/After-Rehabilitation Value limits still apply. All loan amounts will be verified by a subsidy layering analysis, and loan amounts will be reduced if the amount requested exceeds what is needed.

Combining FTHB Program and Project Funds in a Project

Using HOME homebuyer project funds, HOME homebuyer program funds and/or any HOME program income in the same homebuyer project such as a subdivision is not permitted except in limited circumstances and at the sole discretion of HCD.

For information on federal prevailing wage requirements as they pertain to homebuyer projects, see Section XXI.

Program Activities Funding Limits

Maximum: \$1,000,000. Applies to HOME-eligible applicants for all program activities (including Administration and Activity Delivery Costs) subject to the following chart:

Maximum Application Amount	Expenditure rate for 2013 - 2015 HOME Program Activities contracts
\$1,000,000	60 percent or more
\$ 700,000	55 – 59.99 percent
\$ 500,000	50 – 54.99* percent

Minimum: \$300,000

* Applicants with no open HOME contracts past the expenditure deadline may apply for up to \$500,000.

All successful applicants will be evaluated periodically to determine if the rate of expenditure is reasonable. HCD may disencumber all or a portion of the grant if there is an unreasonably low rate of expenditure as determined by HCD.

Program Income (PI): Federal HOME regulations require that all PI funds on hand must be maintained in an interest-bearing account. Interest earned on PI funds is also considered Program Income. PI must be expended prior to drawing down HOME Funds. PI may not be “banked” or set-aside in reuse accounts. This rule applies to all State Recipient HOME applications. Successful applicants may not draw down new HOME funds for project draws if they have PI on hand. State Recipients with PI must consider this when deciding how much to request in this funding round. If a project applicant historically receives a substantial amount of PI, the applicant should contact their HCD Representative to discuss alternative uses of this PI to avoid drawing down funds awarded pursuant to this NOFA.

X. Deep Targeting

A total of \$2 million is available as part of the rental project allocation to assist rental new construction projects to reduce or eliminate permanent private debt requiring mandatory debt service for the purpose of lowering rents on some or all of the project's units. Eligible applicants may apply for up to an additional \$1,000,000 in HOME funds.

Eligible projects are rental new construction projects that do not have 9 percent Tax Credits and set a portion of the units rents at 40 percent AMI or below for the entire Regulatory Term. Projects also must meet the periods of affordability specified in the following table.

55 years	cities, counties, developers and CHDOs
50 years	development on Native American lands

Applicants for Deep Targeting funds must submit two sets of Application documents as set forth in the Deep Targeting Documentation Checklist of the HOME Supplement to the Universal Rental Application. This additional documentation must illustrate any differences in proposed project rent levels, financing commitments, and other financials when funded at the Deep Targeting funding level versus the regular maximum HOME funding level. The additional documentation must also include another "Financial Feasibility Self Evaluation" form.

HCD expects to see a reduction in rents, debt service, operating reserve, and private financing commitments as a result of less private debt. However, there must be no difference in total development cost, or total operating expenses and required reserve deposits under the regular HOME funding scenario versus the Deep Targeting funding scenario. Any differences in total development cost or total operating expenses and required reserve deposits between the two scenarios must be explained in the application.

Although the project unit mix may change with Deep Targeting funds, the total number of units or the size of units in the project may not change. In putting together the unit mix under both scenarios, among the HOME-assisted units, no more than four different rent AMI levels shall be used for each bedroom size.

Deep Targeting Rating Factors

If there are more requests for Deep Targeting funds than available, the available funds will be allocated to projects that rank high enough to be funded through the normal rating and ranking process (described in Section XXII) and based on the Deep Targeting rating factors below:

- i. the higher the percentage of HOME units restricted at or below 40 percent AMI, the more Deep Targeting points that will be awarded; and

- ii. the lower the average rent of HOME units expressed as a percentage of AMI, the more Deep Targeting points that will be awarded.

Fifty percent of funds will be made available to projects in counties in which the HOME fifty percent AMI limit for a household of four is below \$31,950. Fifty percent of the funds will be made available to projects in counties whose HOME fifty percent AMI limit for a household of four is \$31,950 or more. Unused funds in one group will be made available for the other group.

If a project does not score high enough on the Deep Targeting factors to receive Deep Targeting funds, it will be evaluated for overall HOME rating purposes using the rents that are proposed at the regular maximum HOME funding level.

For assistance on Deep Targeting applications, contact Muri Christine Bartkovsky at (916) 263-1176.

XI. Administrative and CHDO Operations Funds

The following limits apply to the amount of State Recipient Administrative and CHDO Operations funding that applicants may receive:

Projects:

- City and county applicants receiving up to \$1,000,000: up to \$25,000 for Administrative funds.
- CHDO applicants receiving up to \$1,000,000: up to \$75,000 for CHDO Operations funds.
- City and county applicants receiving \$1,000,000 or more: up to \$50,000 for Administrative funds.
- CHDO applicants receiving \$1,000,000 or more: up to \$100,000 for CHDO Operations funds.

Program Activities:

All program activities applicants may request up to 2.5 percent of the total application amount for Administrative funds (for State Recipient applicants) or CHDO Operations (for CHDO applicants). Developers, including Native American Entities, of a project shall not act as an administrative subcontractor for an activity and are not eligible for Administrative Costs. Actual eligible expenses must be incurred to draw down these funds.

XII. Activity Delivery Funds

Projects

State Recipient rental and homebuyer projects may receive up to \$50,000 of the contract amount (loan and grant funds) for Activity Delivery costs (Activity Delivery Funds). Activity Delivery Funds are grants and not part of the project loan amount. Activity Delivery Funds may be used at the State Recipient's discretion to fund the Activity, Activity Delivery costs, or any combination of the two. For a description of the types of expenses which may be charged to Activity Delivery, see 24 C.F.R. 92.206(d)(6) and 92.206(f)(2). Activity Delivery, Administration, and CHDO Operations funds should not be included in the Development Budget since the development budget must reflect HOME loan amounts only, not HOME grant funds. Developers, including Native American Entities, shall not act as an administrative subcontractor for an activity and are not eligible for Activity Delivery Costs.

Programs

Except for TBRA activities, State Standard Agreements (contracts) will automatically allow the use of up to the maximum amount of Activity Delivery Funds for each specific activity. At the time of set-up (i.e., when the HOME Recipient is ready to begin drawing activity funds) an Activity Delivery Fund request may be made for actual expenses:

- Up to 24 percent of the HOME loan/grant amount for Owner-Occupied Rehabilitation and for the rehabilitation component of Acquisition with Rehabilitation. Activity Delivery Costs for rehabilitation projects may exceed the 24 percent limit if documentation of actual costs is provided to HCD with the project set-up. Documentation must be of actual costs; consultant billings, without documentation of underlying actual costs are not adequate. See VII(B) for additional guidance.
- Up to 6.5 percent of the total acquisition cost for FTHB activities involving acquisition with rehabilitation.
- Up to 5 percent of the HOME TBRA payment for unit inspection and income determination activities.
- Up to 6.5 percent of the HOME amount for all other activities.

XIII. First-time Homebuyer (FTHB) Required Loan Terms

Primary Loan Term Requirements Applicable to State Recipient, Developers and CHDO FTHB Loans:

Pursuant to the State HOME Regulations, FTHBs shall be required to obtain financing from primary lenders in addition to HOME financing. Loans from primary lenders must comply with the following requirements:

- A minimum loan term of 30 years;

- no temporary interest rate buy-downs; and fully amortized and have a fixed interest rate that does not exceed the current market rate as established by the 90-day “posted yield” for 30-year fixed rate loans by Fannie Mae at <https://www.efanniemae.com/sf/refmaterials/hrny/index.jsp> plus 100 basis points. This means that loans that have an “interest-only” period are not eligible, even if they convert to a fully-amortized loan at some point in the loan term.

Additional State Recipient HOME Loan Terms:

The amount of the HOME loan is limited to the minimum amount necessary to ensure good quality, affordable and financially viable housing for the duration of the affordability period, as determined by a subsidy layering analysis and underwriting of the project financing.

Note: To maximize limited HOME resources, the amount of the HOME loan may not exceed the amount of the primary mortgage.

Pursuant to State HOME Regulation 8205(c)(1)(A)(ii), loans made by State Recipients assisting FTHBs and homeowners whose homes are being rehabilitated shall bear simple interest rates ranging from 0 to 3 percent per annum. Interest and payments shall be deferred for the term of the loan. The State Recipient may forgive some or all of the accrued interest; however, principal cannot be forgiven.

Additional CHDO HOME Loan Terms:

Except as otherwise provided by the State HOME Regulation section 8206.1(c) regarding CHDO qualification to retain loan repayments, HCD shall be the beneficiary on all HOME promissory notes, deeds of trust, and HOME deed restriction documents.

Pursuant to State HOME regulation 8205(c)(1)(A)(i), loans to FTHBs financed from the CHDO set-aside shall bear a simple interest rate of 3 percent per annum for the first 10 years, 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 all requirements set forth in the HCD loan documents.

XIV. Underwriting Standards for Program Activities

When a CHDO is undertaking an Infill New Construction or First-Time Homebuyer Acquisition with Rehabilitation program, an underwriting analysis must include reasonableness of profit or return to the developer (CHDO), project cost reasonableness; market analysis, experience and financial capacity of CHDO, and whether firm financial commitments are in place to fully fund the project.

Except for the CHDO-specific requirements, State Recipients undertaking an Infill New Construction program must also comply with the above requirements.

FTHB Acquisition-only projects are exempt from the market and developer capacity analysis, however the applicant must demonstrate cost reasonableness and that all financial commitments are in place.

Both Owner Occupied Rehabilitation (OOR) programs and TBRA programs are exempt from this underwriting requirement as long as the HOME assistance is provided in the form of deferred payment loans and grants.

XV. Property Standards for Program Activities

The HOME Recipient shall ensure that all housing units meet the property standards in 24 CFR 92.251. All rental housing shall be maintained in compliance with 24 CFR 92.251 for the duration of the affordability period.

The HOME Recipient shall ensure that upon project completion, housing rehabilitated with HOME funds meets applicable local rehabilitation standards or another rehabilitation standard meeting the requirements of 24 CFR 92.251. The HOME Recipient shall ensure that the written scope of work is in sufficient detail to establish the basis for a uniform inspection of the assisted housing to determine compliance with the requirements of this section. The HOME Recipient shall review and approve all written cost estimates after determining that costs are reasonable. The HOME Recipient shall conduct an initial property inspection to identify deficiencies that must be addressed, as well as progress and final inspections to determine that work was done in accordance with work write-ups.

The HOME Recipient must ensure that existing housing that will be acquired for homeownership is decent, safe, sanitary, and in good repair. At a minimum, such housing must meet all applicable State and local housing quality standards and code requirements, and contain no deficiencies set forth by HUD based on applicable Uniform Physical Condition Standards at 24 CFR 5.705. The HOME Recipient must inspect the

housing and document compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. Housing that does not meet these standards must be rehabilitated according to these standards or it cannot be acquired using HOME funds.

All housing occupied by tenants receiving HOME Tenant-Based Rental Assistance must meet the standards established in 24 CFR 982.401 or any successor requirements established by HUD.

Construction of all manufactured housing, including manufactured housing that replaces an existing substandard unit under the definition of 'reconstruction' at 24 CFR 92.2, must meet the Manufactured Home Construction and Safety Standards set forth in 24 CFR part 3280. These standards preempt State and local codes which do not conform to the federal standards for the new construction of manufactured housing.

The HOME Recipient must ensure that manufactured housing assisted with HOME funds complies with applicable State and local laws or codes. In the absence of such laws or codes, the installation must comply with the manufacturer's written instructions for installation of manufactured housing units. All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must be on a permanent foundation that meets the requirements for foundation systems as set forth in 24 CFR 203.43f(c)(i). All new manufactured housing and all manufactured housing that replaces an existing substandard unit under the definition of "reconstruction" must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

In HOME-funded rehabilitation of existing manufactured housing the foundation and anchoring must meet all applicable State and local codes, ordinances, and requirements or in the absence of local or state codes, the Model Manufactured Home Installation Standards at 24 CFR part 3285.

Manufactured housing that is rehabilitated using HOME funds must meet HOME property standards requirements of this section, as applicable. The HOME Recipient shall document this compliance in accordance with inspection procedures established pursuant to 24 CFR 92.251, as applicable.

XVI. Article XXXIV (rental projects only)

Article XXXIV of the California Constitution requires local voter approval before any state public body can develop, construct, or acquire a low-rent housing project in any manner. However, the Public Housing Election Implementation Law (Health & Safety Code, §§ 37000 – 37002) provides clarification as to when Article XXXIV is applicable. Health and Safety Code section 37001, for example, lists a number of project types that are not considered “low-rent housing projects.”

Applicants must submit a legal opinion letter that analyzes the project’s compliance with or exemption from Article XXXIV. The Article XXXIV opinion letter must demonstrate that the applicant has considered both the legal requirements of Article XXXIV and the relevant facts of the project (e.g., the level of participation by any and all state public bodies, the number of low-income restricted units, and the general content of any regulatory restrictions). Any conclusion that a project is exempt from Article XXXIV must be supported by specific facts and a specific legal theory for exemption that itself is supported by the Constitution, statute, and/or case law.

If a project is subject to Article XXXIV, the letter must demonstrate that there is Article XXXIV authority for the project. This may be done by providing information from an appropriate local government official either that a referendum for the specific project has been passed by the voters, or that a blanket referendum has been passed and the locality has allocated sufficient Article XXXIV authority to the project. Applicants asserting that their proposed project complies with Article XXXIV because of the passage of a voter-approved referendum must provide a copy of the referendum and a certified vote tally along with their Article XXXIV letter.

In this instance, the Article XXXIV letter must also provide information from the appropriate local government official regarding how many low-rent units are authorized under the referendum, and how many have been developed, constructed, or acquired to-date pursuant to that referendum so that HCD can determine if sufficient Article XXXIV authority exists for the proposed units.

For State Recipients, the Article XXXIV legal opinion letter must be prepared by counsel for the local governmental entity. Since HCD is not the lender for State Recipient projects, it will generally defer to the local counsel’s Article XXXIV determination as long as the Article XXXIV letter is a well-reasoned, thorough legal analysis of the facts and law.

For CHDOs and developers, the Article XXXIV legal opinion letter must be prepared by counsel for the local governmental entity or the developer. HCD is the lender for CHDO and developer projects. Therefore, legal opinions submitted by applicants must be acceptable to HCD.

XVII. Match Requirements

All match requirements are waived for applications pursuant to this NOFA. However, all eligible HOME match funding that applicants obtain due to their activity's need for other funding shall continue to be reported in the project Set-up and Completion Reports so that HCD can bank any additional match and continue to waive the match. Match sources include funding derived from below-market rate loans (even if these loans are not repaid to the HOME Local Account) State Low Income Housing Tax Credits, property tax waivers, bond financing, fee waivers, grants, and other sources. HCD will review all project Set-up and Completion Report forms to make sure that all reportable match funding has been included. For a HOME match calculation tool (located under "Additional Resources"), see <http://www.hcd.ca.gov/fa/home/>.

The HOME Contract Management Manual also contains additional information and resources on match, see <http://www.hcd.ca.gov/fa/home/manual/14/>.

XVIII. Timeframes for Use of HOME Funds

Recipients of HOME funds are subject to progress deadlines and expenditure deadlines that are defined in the State and federal regulations and specified in the Standard Agreement.

Projects

If a project fails to meet one or more of the deadlines outlined in State HOME regulation section 8217, the HOME applicant (city, county, developers applying directly or CHDO), as well as the project's developer, owner, and managing general partner, may receive a performance penalty on the next project application in which they are involved. If a project fails to meet three or more deadlines, the HOME applicant shall be held out of future project funding rounds until that project is completed, occupancy is obtained, all expenditures are made, and all necessary HOME funds are drawn. The HOME applicant and the project's developer, owner, and managing general partner may also receive a performance penalty on the next project application in which they are involved.

State Recipients and CHDOs may also request that these holdout and point deduction penalties be waived when it is determined that the violation was clearly outside of the control of all of the following parties: the applicant, developer, owner and managing general partner. If a waiver of point penalties or holdout penalty for missed project deadlines is needed, contact Laura Bateman, Loan Closing Manager, at (916) 263 1302. In order to receive a decision on your waiver request before the HOME application deadline, you must submit your request, in writing, by January 17, 2017.

Program Activities

All Program Activities funds must be expended by the end of the thirty-sixth month following the award date. For example, awards are made in February 2017; the expenditure deadline will be March 2, 2020. HCD expects grantees to cease accepting new applications and processing existing applications in order to meet this deadline. No extensions will be allowed except as noted below. Grantees must cease the processing of applications well in advance of the expenditure deadline to ensure that all work is completed prior to the expenditure deadline. Exceptions will be considered only if the State Recipient shows there was clear and indisputable evidence of delays that were beyond the control of the borrower and/or the State Recipient or that HCD was responsible for the delay.

XIX. Affordability Requirements

Rent levels shall be restricted for the periods of affordability set forth at the lesser of the rent levels permitted pursuant to the federal HOME regulations, or other rent levels approved by HCD. (Generally speaking, the other rent levels approved by HCD would be the lower rents that the applicant commits to in its HOME application.)

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.

At initial occupancy by each household, household income levels must be restricted at the same AMI level as the proposed rent level for each unit. In projects with renewable project-based rental assistance, rents will be determined based on the amount of the tenant-paid portion of rent, and the rental subsidy program regulations must require that tenant AMI income levels at initial occupancy be consistent with the designated AMI rent level for that unit as set forth in the HOME application. State Objective rent levels will be restricted for the entire HOME affordability period. The manager's unit may be excluded from this calculation.

Applicants proposing the use of Low Income Housing Tax Credits must apply to the Tax Credit Allocation Committee for the exact rent structure identified in the HOME project report.

A. Rental New Construction Activities

- Rental New Construction housing projects shall have affordability periods of 55 years. **Periods of affordability for projects developed on Indian reservations or Native American Lands will be for at least 50 years.**

B. Rental Rehabilitation Activities

- Rental Rehabilitation housing projects with acquisition shall have affordability periods of 55 years. **Periods of affordability for projects developed on Indian reservations or Native American Lands will be for at least 50 years.**

- Rehabilitation without Acquisition:

Amount of HOME Assistance Per Unit	Minimum Period of Affordability
More than \$40,000	20 years
\$15,000 to \$40,000	15 years
Less than \$15,000	10 years

C. Homebuyer Activities

Homebuyer activities shall have minimum affordability periods of:

Amount of HOME Assistance Per Unit	Minimum Period of Affordability
More than \$40,000	15 years
\$15,000 to \$40,000	10 years
Less than \$15,000	5 years

D. Homebuyer Recapture Requirements Applicable to State Recipients and CHDOs

Pursuant to federal HOME Regulation 92.254 and State HOME regulation 8206.1(b)(3), if the home is sold prior to the end of the affordability period, the HOME loans are subject to recapture (i.e., the HOME loan must be paid off when the home is sold). Resale controls are not permitted, whether in the form of local resale controls or HOME resale controls. HCD may impose repayment requirements on HOME grant funds used for rehabilitation activities completed as part of a homebuyer program.

The entire amount of the HOME loan may be recaptured by the local jurisdiction or by HCD in the case of CHDO loans. The amount of accrued interest recaptured may be reduced as permitted under the State HOME Regulations. However, pursuant to 24 CFR 92.254, when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, only the net proceeds can be

recaptured, if any. The net proceeds are the sales price minus senior loan repayments (other than HOME funds) and any closing costs. HOME loans made under the recapture option may also be assumed by subsequent HOME-eligible purchasers.

E. Owner-Occupied Rehabilitation Activities

Owner-Occupied Rehabilitation activities have no affordability period. However, HOME funds must be provided as loans (except for relocation, lead-based paint remediation, Administration, Activity Delivery Costs, and the amount allowed as grants as necessary and not to exceed 25 percent of the applicable per-unit subsidy limits). Therefore, the loan must be repaid if the home is no longer occupied by the owner.

XX. Income Eligibility

The State HOME Program uses the Part 5 (formerly known as Section 8) definition of low-income (24 C.F.R. Part 813), and uses the Part 5 methodology in calculating the income of beneficiaries. Please study the Income Calculation and Determination Guide for Federal Programs, at <http://www.hcd.ca.gov/fa/cdbq/GuideFedPrograms.html>.

XXI. Compliance with Other Federal Requirements

All activities funded with HOME funds or HOME PI are required to comply with HUD's federal "overlay" requirements found in Section 92.350 and following of the HOME Final Rule, including, but not limited to, compliance with requirements concerning the National Environmental Policy Act (NEPA), federal and State prevailing wage, relocation, Equal Opportunity and Fair Housing, Affirmative Marketing, Section 504 and the Americans with Disabilities Act, Section 3 (employment of low income persons), OMB Circular A-133 audit, OMB Super Circular 2 CRF Part 200 (passed December 26, 2013) and debarred, suspended or ineligible contractors. Failure to comply with federal overlays could result in significant project cost increases, rejection of the HOME application, or loss of points in current or future HOME funding rounds.

National Environmental Policy Act (NEPA)

Once the HOME Application has been submitted, and before the NEPA Authority to Use Grant Funds (AUGF) has been issued, the applicant and any participant in the development process cannot take any "choice-limiting actions" as defined in the next paragraph.

As a general rule, any action on the site or on behalf of the project by anyone is a choice-limiting action if it occurs after the HOME application has been submitted to HCD, and before the Authority to Use Grant funds is issued.

“Choice-limiting actions” include the execution of any agreements (such as loan documents) for ANY funds (not just HOME funds), the purchase of the site, any construction loan closing (not just the HOME loan), any payment of local fees, or any site work, other than annual weed control.

Note: Pursuant to NEPA regulations, certain activities are not considered choice-limiting actions regardless of when they are carried out. These activities include, but are not limited to, such things as: environmental and other studies; resource identification and development of plans and strategies; submitting funding applications, inspections and testing for hazards or defects; purchase of insurance; payment of principal and interest on loans made or obligations guaranteed by HUD; and assistance for improvements that do not alter environmental conditions and are necessary to address control the effects from disasters or imminent threats to public safety. For more information on activities not considered choice-limiting actions, see [24 CFR 58.34](#).

There are four acceptable forms of site control that avoid “choice-limiting” NEPA problems:

The site may be purchased or a long-term lease may be entered into consistent with the UMR requirements, prior to submitting the HOME application.

An Option to Purchase may be contained, conditioned on the Responsible Entity's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review, and the receipt of an “Authority to Use Grant Funds” from HCD for State Recipient projects and from HUD for CHDO projects. The cost to secure the site control document can only be a nominal portion of the purchase price. For more details on required and prohibited provisions of agreements consistent with NEPA, see [CPD Notice 01-11](#) and Assistant Secretary Mercedes Marquez' August 26, 2011 memo, at http://www.hcd.ca.gov/fa/home/manual/05/Aug_26_2011-guidanceonoptionsandconditionalcontracts.pdf.

A Purchase Agreement, Disposition and Development Agreement (DDA), Option to Lease, or Exclusive Right to Negotiate may be obtained but this agreement cannot be conditioned on NEPA clearance or any other federal requirement. General HUD rules state that purchase agreements are acceptable if federal funds are not contemplated. Applicants are cautioned to make sure that the Purchase Agreement or DDA is open-ended or is of sufficient duration that it does not need to be extended after the HOME application is submitted.

HUD has ruled that if a Purchase Agreement/DDA expires after the HOME application is submitted, and before the Authority to Use Grant Funds is executed, the execution of an extension would be a choice-limiting action (renewal prior to expiration is okay). The application also should ensure the Purchase Agreement/DDA has other contingencies such as a permanent financing contingency so that the seller cannot legally compel you to purchase the site prior to receiving the AUGF.

A conditional purchase contract may also be used for an existing single-family home (1 to 4 units) or an existing multifamily residential project in some limited circumstances even when federal funds have already been contemplated. For more information, see the August 26, 2011 memo at http://www.hcd.ca.gov/fa/home/manual/05/Aug_26_2011-guidanceonoptionsandconditionalcontracts.pdf.

For all new construction projects and some rehabilitation projects, compliance with NEPA is evidenced by an AUGF. The AUGF is issued by HUD for CHDO projects and by HCD for State Recipient projects. For the few rehabilitation projects not requiring an AUGF, State approval of the environmental documentation is still required prior to taking any choice-limiting actions. For a thorough explanation of the NEPA process, [see Chapter V](#) of the HOME Contract Management Manual.

HCD encourages starting the preparation of the NEPA Environmental Assessment (EA) as soon as possible, but no later than receipt of an award letter.

For rental projects, Project Reports will frequently have conditions requiring additional analysis of environmental impacts.

If there are any questions regarding choice-limiting actions, or the level of environmental clearance required of your program or project, contact your HOME Representative prior to taking any action concerning your proposed HOME program or project.

The application must disclose all environmental hazards, and if awarded funding, HCD must be kept fully informed regarding all environmental issues that arise. Failure to do so will be considered a material misrepresentation and result in a performance point penalty for all members of the development team.

Federal Prevailing Wage Requirements (Davis-Bacon Wage Requirements)

Federal prevailing wages must be paid on projects involving site development, construction, and rehabilitation where there are 12 or more HOME-assisted units.

The HOME applicant and the construction contractor must ensure that the Davis-Bacon Wage Requirements as well as State prevailing wage laws are followed. The Sources and Uses submitted with the HOME application will be examined to ensure that prevailing wage costs have been considered (federal and State, if applicable). CHDOs are required to hire an outside consultant to act as a Labor Standards Coordinator. If the State Recipient does not have existing staff to enforce federal labor standards, then it is HIGHLY recommended that an outside labor consultant be hired.

Homebuyer self-help projects with 12 or more HOME-assisted units may be excluded from Davis-Bacon wage requirements if either of the following applies:

- site development was completed before the application to HOME, the use of HOME funds was not contemplated when the site development was completed, and there are no agreements or contracts for more than 11 HOME units. If the use of HOME was contemplated before the site development was completed, Davis-Bacon wages must be paid on the entire project; or

- if the self-help families purchase finished lots and contract individually with the General Contractor for construction of their homes, and there are no other construction contracts or subcontracts that cover more than one unit.

Relocation

Relocation costs must be paid if individuals or businesses will be temporarily or permanently displaced as a result of a HOME-assisted project. Specifically, federal relocation requirements extend back to the “Initiation of Negotiations” (ION). For a discussion of relocation notice requirements, and what constitutes the ION, see the HOME Contract Management manual at http://www.hcd.ca.gov/fa/home/manual/07/D01_RelocationChapterTextpercent20Revised4-14-11.doc.

The ION determination requires a case specific analysis. HCD highly recommends consultation with HOME staff to determine the specific date for ION. This recommendation applies to all rental and FTHB projects involving any relocation activities. An accurate determination is critical, because relocation costs may be higher if an earlier “initiation of negotiations” date is necessary. Applications for tenant-occupied properties must have already provided the “GIN” to all tenants by the date of the ION.

The Sources and Uses submitted with the application must adequately budget for relocation costs. For guidance in estimating relocation costs, contact your HOME Representative. Consistent with federal relocation requirements prohibiting economic displacement, if rents for existing tenants will increase, a transition reserve must be budgeted to maintain rents for existing tenants as the higher of 30 percent of their income at ION or the rent at the time of ION, not including regular increases in expenses, for as long as they live in the project.

Homebuyer 90-Day Vacancy Rule: Relocation requirements will also be triggered if a FTHB proposes to purchase a home that has been occupied by a renter in the 90 days preceding the date of the purchase agreement. Exceptions to this rule can be made by HCD on a case-by-case basis with adequate third-party documentation that the tenant moved for reasons unrelated to the sale of the property, such as the tenant moving for another job.

Normally, relocation will not be triggered for OOR or TBRA programs. However, temporary relocation costs are an eligible HOME grant expense.

Procurement Requirements for State Recipients Using Administrative Subcontractors

Except for procurement of the NEPA consultant, which can be accomplished using the small purchase procurement method (i.e., by use of informal price quotations), State Recipients using Administrative Subcontractors paid with HOME Funds must follow a competitive Request for Qualifications (RFQ) or Request for Proposals (RFP) procurement process to select the Administrative Subcontractor. For information on this procurement process, see the HOME Contract Management Manual at http://www.hcd.ca.gov/fa/home/manual/04/D01_Procurement_Chapter.doc.

XXII. State Recipient Rental Project Set-up and Loan Document

HCD strongly recommends completion of the project set-up prior to construction loan closing. Failure to do so may result in delays in HOME disbursements, reduction of the HOME loan amount, HOME funding disencumbrance, and/or mandatory amendments to previously executed loan documents (with appropriate subordinations). The set-up package should be submitted to HCD at least 60 days, but preferably 90 days, prior to the desired closing deadline to allow enough time for this process. HCD must also be notified of all significant changes in the project as changes occur. It is not acceptable to notify HCD of significant project changes only when the project set-up package is submitted.

State Recipients

State Recipients, using funds made available from this NOFA or from PI, will be the lender for rental projects, and therefore, must adequately secure the repayment of HOME funds and compliance with HOME affordability requirements through the use of a promissory note secured by a deed of trust and a regulatory agreement. The deed of trust and the regulatory agreement must be recorded securing the project property. If security for repayment of HOME funds is a leasehold, the owner of the fee either must permit recordation of the HOME deed of trust and regulatory agreement on the fee, or the fee owner must enter into a lease rider providing appropriate lender protections to the State Recipient. The lease must also comply with the requirements of UMR Section 8316. In addition, if HOME funds will be used for construction, the State Recipient and borrower should execute a development agreement clearly setting forth the terms and conditions of disbursement of HOME funds. The State Recipient is responsible to ensure continued compliance with all HOME requirements, and if the project should fail within the term of the regulatory agreement, is responsible to repay HCD all HOME funds.

XXIII. Indian/Native American Lands Project Set-up

The following additional HOME Loan Terms for development of Indian or Native American Lands shall apply as a condition of funding set forth in a Standard Agreement, but not as a condition in the competitive award process:

- (1) Bureau of Indian Affairs (BIA) Consent.** - Applicants shall obtain Bureau of Indian Affairs consent to applicant's execution of all Department-required loan documents prior to award disbursement. This requirement shall not apply to projects that are Tribally-Owned Unrestricted Lands. Applicants must obtain Bureau of Indian Affairs consent to the recordation of all Department loans recordable instruments.

- (2) **Personal Jurisdiction for Tribal Applicants** - For applicants that are Indian Tribes or Indian Tribe subsidiary entities, all such applicants shall provide and execute a limited waiver of sovereign immunity agreeing to the personal jurisdictions of state court. HCD may waive this requirement for applicants that have a tribal court system (having both personal and subject matter jurisdictions) that is satisfactory and accessible to HCD, as determined in the sole discretion of HCD and upon counsel and consent of the California Attorney General.
- (3) **Subject Matter Jurisdiction for Restricted Tribal Lands** - For applicants proposing projects on Tribal and Individual Trust Lands or Tribal and Individual Fee Restricted Lands, all such applicants shall cause the subject Indian Tribe to provide and execute a limited waiver of sovereign immunity satisfactory to HCD agreeing to the subject matter jurisdiction of state court. HCD may waive this requirement if the property is controlled by an Indian Tribe that has:
- (a) a tribal court system satisfactory and accessible to HCD, as determined in the sole discretion of HCD and upon consent of the California Attorney General, and
 - (b) as determined by HCD, a sufficient recording and mortgage foreclosure ordinance in effect for the subject land; all ordinances modeled on the United States Department of Housing and Urban Development Office of Native American Programs model ordinance shall be presumed sufficient.
- (4) **Title Insurance Requirements** - Applicants shall provide title insurance for the property underlying the project satisfactory to HCD. notwithstanding the foregoing sentence, upon a showing of good cause, for applicants unable to provide a conventional title insurance policy satisfactory to HCD, all such applicants shall demonstrate to the satisfaction of HCD that they hold title to the property pursuant to a title condition report issued by the BIA Land Title and Records Office, and pursuant to a title opinion letter issued for the benefit of HCD but paid for by the Applicant.
- (5) **Recordation Requirements** - Where recordation of instruments are required by HCD, the subject instrument shall be deemed sufficiently recorded if recorded with both the Land Titles and Records Office at the BIA and within the tribal official records office satisfy subsection (3)(B) above. For property that is Tribal or Individual Fee Restricted Lands or Tribally-Owned Unrestricted Lands shall also be satisfied if the subject instruments are recorded in the County recording system having jurisdiction over the property.
- (6) **Fee Security Required** - For all projects, Tribal or Individual Trust Lands, fee security shall be required, unless the terms allowing leasehold security are satisfied as set forth in Title 22 CCR 8316. If a HCD loan is recorded on fee land then there must be a restriction preventing that land being put into trust until the HCD loan term is complete.

- (7) **Minimum Requirements for Tribal Law** - For all projects that do not provide limited waivers of sovereign immunity for both personal and subject matter jurisdiction, the following shall be the minimum requirements for the tribal legal system satisfying subsection (3)(B) above:
- (a) The Tribal court must have jurisdiction over the real property underlying the Rental Housing Development project;
 - (b) The Tribal court must have foreclosure, eviction, lease enforcement, and housing regulatory compliance and enforcement procedures satisfactory to HCD;
 - (c) Land leases approved both by the BIA and Indian Tribe;
 - (d) Rights of Department access to the Tribal court system satisfactory to HCD, having provisions granting HCD and other lenders access to tribal lands for the purpose of asset management and compliance and also for any servicing and repair of the properties.
- (8) **Minimum Requirements for Sovereign Immunity Waivers** - For all projects that rely upon limited waivers of sovereign immunity, the sovereign immunity waiver language shall be included in HCD standard agreement, and all Department regulatory and loan agreements. The applicant shall also provide or obtain a separate limited waiver of sovereign immunity instrument for both personal and subject matter jurisdiction which shall mandate at a minimum, compliance with State construction standards and regulations.

XXIV. State Recipient OMB A-133 Audit Documentation

Local governments that expend in excess of \$750,000 in federal funds during the fiscal year are required to submit an OMB A-133 Single Audit Report and 2 CFR Part 200 Audit compliance package to the California State Controller's Office (SCO). The 2014-15 audit package was due by March 31, 2016.

HCD will make the determination on the status of A-133 Audit compliance as of February 2, 2017 by consultation with SCO only. **Jurisdictions that are exempt from filing an A-133 Audit because the level of federal funds is below the threshold must also submit with their HOME application a copy of the letter to SCO notifying their exempt status.** For more information on the required content of the letter, see http://sco.ca.gov/aud_exempt_entities.html.

Note: It is strongly recommended that each applicant check with SCO to confirm receipt of a complete A-133 submission by the NOFA application due date, and that the submission is properly reflected on SCO's status list.

You may check your jurisdiction's OMB A-133 compliance status at <http://sco.ca.gov/Files-AUD/SingleAud/statusreport.pdf>.

Questions regarding compliance with the submittal requirements of OMB A-133 can be directed to NOFA Manager, Craig Morrow at 916-263-4847. HCD will only be able to indicate whether a jurisdiction is in compliance according to SCO's A-133 Status Report. Technical questions related to why the jurisdiction is deemed not in compliance must be directed to SCO.

XXV. Application Evaluation

A. Rating and Ranking

HCD will rate, rank and fund applications based on review of all eligible activities for which funds are requested. The application must be submitted using HCD forms. The application must contain all information required pursuant to Section 8211(c), (d), and (e).

All scores for projects are subject to the appeal process described in Section III.

Note: Each project or combination of program activities will be evaluated and ranked separately.

Except as noted, if at the time the HOME rating and ranking process is underway and an application has been submitted for the same project for any other California Housing Finance Agency (CalHFA) or HCD financing source, and is being recommended for funding, HOME will count that financing as committed for rating purposes. For how CalHFA and HCD financing will be considered for that factor, see the State Objectives factor for special needs housing in Section XXV. Please consult with other CalHFA or HCD programs regarding their rating methodologies. HCD requires full disclosure in each HCD application of all pending and proposed applications for other HCD applications for the same project regardless of who is applying for funding (e.g., city, county, developer, sponsor, etc.).

Pursuant to Section 8212(d)(5) of the State HOME regulations, project applications must receive a minimum score of 930 points to be funded. Applications will be funded in descending order. Applications that qualify for CHDO and rural set-asides will be funded first based on their scores as necessary to meet the minimum set-asides. Once the set-asides have been achieved and the top ranked project developed on Indian Reservations or Native American Lands has been rated all remaining applications will be funded within their respective allocations pursuant to Section 8212.1 based on their scores relative to all other applications with the highest scoring application funded first.

In the case of a tie score, the application demonstrating the highest jurisdictional poverty level will be funded first. Final funding decisions will be made by HCD's Division of Financial Assistance's Deputy Director.

B. Minimum Requirements: Applications for the HOME Program are not considered for funding unless the application demonstrates that the following minimum requirements have been met pursuant to Section 8212 of the HOME regulations:

1. The application was received by the deadline specified in this NOFA.
2. The applicant is eligible pursuant to Sections 8204, 8204.1(c) and Appendix A of the NOFA.
3. The applicant proposes at least one eligible activity pursuant to Section 8205 (other than Administration).
4. The use of funds is eligible per Sections 8205 and 8210(c).
5. The application is complete pursuant to Section 8211(b).
6. The applicant has no unresolved audit findings pursuant to Section 8204(a)(1)(D) (ii) and (2)(C)(i).
7. The applicant has provided documentation satisfactory to HCD that it is in compliance with the submittal requirements of OMB A-133, Single Audit Act pursuant to Sections 8204(a)(1)(D)(iv) and (2)(C)(iii). For more information, see Section XXIV.
8. The applicant and any member of its program or project team is not on the list of debarred Contractors at <https://www.sam.gov/portal/public/SAM/> pursuant to Sections 8204(a)(1)(D)(iii) and (2)(C)(ii).
9. The total amount of funds requested for both Administration and Activity-specific costs does not exceed the limits identified in the NOFA.
10. The application form provided by HCD has not been altered or modified except to accommodate computer software.
11. CHDO applications must contain procedures for ensuring effective project control pursuant to 24 CR 92.300(a)(1) and State HOME regulations section 8204(a)(2)(D).

In addition, project applications must demonstrate:

1. The project is financially feasible. **Section 92.250(b) of the 2013 HOME Final Rule requires that the State's underwriting and/or subsidy layering must demonstrate that it is not investing any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at minimum, the period of affordability). The federal period of affordability for projects is 20 years.** Pursuant to Section 8212(a)(6) of the State HOME Regulations, HCD must determine the project is

financially feasible to consider it for funding. Site development issues, local government approvals, development costs, project timing, project market, and other development factors will be evaluated in order to make this determination. Projects may not be deemed feasible if information presented in the application results in unknown or uncertain project costs and/or timelines. Therefore, the Sources and Uses form must contain line items for any project costs related to determining the feasibility of the project, including but not limited to, prevailing wages, environmental remediation (including mitigation of any Recognized Environmental Conditions and other environmental hazards) elevation above a flood plain, and relocation. Applicants proposing projects on sites that were formerly orchards and/or vineyards may be required to submit an analysis of soil testing for pesticides remaining in the soil. If your proposed project site borders a railroad, whether currently operating or abandoned, HCD may require soils testing for metals, including but not limited to arsenic (arsenic has been commonly used along railroad lines for weed control). It is recommended this testing be performed prior to submitting the HOME application so the applicant can determine whether pesticide or arsenic remediation is required and include the cost for such remediation in the development budget.

2. The project has site control pursuant to UMR, Section 8303. (Note: Projects must also meet HUD requirements regarding acceptable forms of site control; for more information, see Section XXIV.)
3. There is no pending litigation that could affect implementation of the project as proposed.
4. For rental projects, that the project either complies with or is exempt from Article XXXIV of the California Constitution pursuant to Section 8212(a)(7); for more information on Article XXXIV, see Section XVI.C. Rental and FTHB Project Application Rating Factors:

<u>Activity</u>	<u>Maximum Points Available</u>
Rental New Construction*	1550
Rental Rehabilitation*	1550
First-Time Homebuyer Projects	1410

*For detailed self-scoring checklists for the Rental New Construction and Rental Rehabilitation applications see HOME Supplement.

Detailed Rental New Construction and Rental Rehabilitation scoring is shown in the table on the following page.

5. Relocation requirements for vacant land

No relocation plan is required if the land is vacant and the Applicant can support its vacancy claim by credible evidence.

An Applicant that asserts that their project involves no relocation must submit with their application a detailed explanation supporting their claim as to why no relocation (of tenants, farms, business etc) is required.

Once the Department receives, reviews, and finds the documentation(s) is acceptable, the Department will create a *Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement* that must be executed by the Applicant/Borrower/Sponsor prior to the execution of the Department Standard Agreement. This document is used by the Applicant/Borrower/Sponsor of a housing project to show and certify that due to the activities of the project, there are no displacement (including displacement of tenants, business, and farm) and therefore no relocation.

Supporting documentation can include, background information, project information, purchasing information, current situation, etc. HCD's Legal Affairs Division makes a legal determination as to whether a relocation plan is needed.

Other Supporting documentation can be in the form of any of the following examples:

- a. Mini Relocation Plan with pictures;
- b. Summary Relocation Report;
- c. Scope of Work;
- d. Renovated Work Report;
- e. Letter from the Engineer stating the Scope of Work;
- f. Sales contract evidencing purchase of vacant land;
- g. Alta survey of (purchased) vacant land;
- h. Property tax assessment for vacant land;
- i. Photographic evidence of vacant land; and
- j. Other Supporting Documentation.

***Note:** Truly vacant land is not developed land nor agricultural land.

***Note:** If the property was vacated for the project then relocation applies. A tenant is defined as someone who is living or storing their belongings on the property with the owner's consent (not squatters), whether or not the "tenant" is paying rent.

The more thorough and clear the supporting information is given to the Department, the faster the *Certificate* will be created.

Rental New Construction and Rental Rehabilitation Scoring

Factor	Sub-factor (if any)	Points
<p>Housing Element:</p> <p>The local public entity's adopted housing element is in substantive compliance with State housing element law as of February 02, 2017 the NOFA due date, as defined at Section 8201(t) of the State HOME Regulations.</p> <p>Newly-formed cities not required to be in compliance, projects developed on Native American Lands as defined in Section 8201(y)(1) and CHDOs shall receive full points in this category. For more information, see http://www.hcd.ca.gov/hpd/hrc/plan/he/status.pdf.</p>		50
<p>Direct HOME Allocation Declined:</p> <p>Activities proposed within a jurisdiction eligible for a direct HOME allocation from the U.S. Department of Housing and Urban Development (HUD) wherein the jurisdiction declined the allocation to preserve eligibility for this NOFA.</p>		50
	<p>Activities proposed in a rural community.</p>	50
	<p>Prior applicant experience in the implementation of local, State or federal affordable housing or community development projects in the last seven years (calendar years 2010 – 2016).</p>	50
	<p>Prior development team experience in developing the same type of subsidized project as proposed in the application in the last five years (calendar years 2012 – 2016).</p>	200
<p>Prior performance of the applicant, developer, owner, and managing general partner (if the project has one) in all HOME project contracts (rental and FTHB) which were awarded between 2011 – 2016</p>	<p>Performance Factor #1: Missed project deadlines of the applicant, developer, owner, and managing general partner, for deadlines occurring by the HOME application deadline of February 2, 2017. Points will be deducted for missed deadlines as follows: 5 points for the Permanent Financing deadline, 10 points for the Project Set-up deadline, 10 points for the Construction Loan Closing Deadline, 80 points for the Completion Deadline, and 20 points for the Expenditure Deadline. For possible credits, see Note 1.</p>	Maximum deduction of 200 points
	<p>Performance Factor #2: Late reports of the applicant. Up to 50 points may be deducted for late monthly reports, late Quarterly Program Income reports due for both program and project contracts between June 1, 2015–December 31, 2016 late Project Completion Reports due during this time period and for the Annual Performance Report due in 2015. HCD reserves the right to deduct points even if the Annual Report is on time but prepared inaccurately.</p>	Maximum deduction of 50 points

	<p>Performance Factor #3: Up to 200 points will be deducted if applicants, developers, owners, and managing general partners, between July 1, 2011 – December 31, 2016 have made a material misrepresentation of any requirement or fact in an application, project report or other document submitted to HCD including but not limited to that which jeopardizes HCD’s investment in a project or places HCD at risk of a monitoring finding.</p> <p>HCD will notify the relevant party of the proposed penalty on or about February 2, 2017; this notification will also allow an appeal to be submitted.</p>	<p>Maximum deduction of 200 points</p>
	<p>Performance Factor #4: Noncompliance with monitoring requirements identified in the last five years (i.e., July 1, 2011 – December 31, 2016). There are two distinct sub-categories:</p> <p>First, applicants, owners, and managing general partners who have not complied with monitoring requirements identified by HCD in the last five years will lose up to 100 points. HCD will notify the relevant party of the proposed penalty on or about February 2, 2017; this notification will also allow an appeal to be submitted.</p> <p>Second, points will also be deducted for the following late reports associated with occupied HOME rental projects (HCD will calculate these deductions for only applicants, owners, and managing general partners involved in 2016 project applications, so advance notice will not be provided on the status of these reports):</p> <p><u>State Recipients</u></p> <ul style="list-style-type: none"> • 10 points will be deducted for each late Annual Monitoring Report due to HCD July 1, 2015 thru December 31, 2016. <p><u>CHDOs</u></p> <ul style="list-style-type: none"> • 5 points will be deducted for each late Annual Operating Budget and each late Annual Report due to HCD July 1, 2015 – December 31, 2016. 	<p>Maximum deduction of 100 points</p>
<p>All Applicants start with 200 points. Performance Points noted immediately above are deductions from these points. The maximum point deduction for Performance is 200 points.</p>		<p>200</p>
<p>Community Need: see Appendix H of this NOFA for Community Need point scoring by activity type (located on the HOME NOFA webpage underneath the NOFA).</p>		<p>250</p>

Project Feasibility	Compliance with State and Federal Requirements (including UMRs for rental projects)	195
	Highest percentage of HOME-assisted units	5
Project Readiness	<p>For detailed Project Readiness factors for rental projects please see the HOME Supplement.</p> <p>For homebuyer projects please see the Homebuyer Project Application (Part B).</p> <p>Rating points for Project Development Plan (PDP) will be awarded if the <u>required</u>* item has been submitted, was prepared within the applicable timeframes, and meets the basic requirements specified in the HOME Supplement. PDP items will be reviewed to make a feasibility determination for the applications scoring highly enough to be funded.</p> <p>*Under this NOFA, the Geotechnical Report is not required with the application and will not be considered for scoring purposes. See HOME Supplement for details.</p>	300
State Objectives (no more 200 points total) Rental Projects Only (except for “Overcoming Impediments to Fair Housing” and “Catalyst Projects”, which are FTHB Project State Objective rating factors also).	<p>Deeper Affordability: Up to 50 points will be awarded based on the percentage of total bedrooms in all units (HOME and non-HOME) restricted to households with incomes at 50 percent AMI or less per the Excel worksheet provided with the HOME Application.</p> <p>Use the “Deeper Affordability” Excel file to calculate your score for this rating factor.</p>	50
	<p>100 Percent Financing Committed or Noncompetitive: 70 points will be awarded for projects that have 100 percent of their non-State HOME permanent financing committed by February 2, 2017.</p> <p>Projects proposing 4 percent tax credits qualify for these points if all commitments other than tax-exempt bonds, 4 percent tax credit proceeds, AHP and deferred developer fee are in place.</p>	70
	<p>Overcoming Impediments to Fair Housing. 35 points will be awarded to rental and FTHB projects proposed in census tracts where total minorities are not overrepresented by more than 20 percentage points compared to the percentage of total minorities in the county.</p>	35

State Objectives (continued)	Special Needs Populations: Up to 50 points will be awarded to rental projects with funding commitments that are proposing to target special needs populations, including farmworkers, through the use of any of the following financing sources: HUD 202, HUD 811, HUD Supportive Housing Program, or State Mental Health Services Act (MHSA). Projects applying for other HCD Special Needs Population funding also qualify if HCD determines the project will receive funding under these programs. Points will also be awarded to projects which provide project-based rental assistance under the terms of an MHSA or Veterans Affairs Supportive Housing Voucher (HUD-VASH) or Veterans Housing and Homelessness Prevention (VHHP) Program contract that has already been committed to this project, see State Objectives Table 1.	50
Catalyst Projects	For rental and FTHB project applications, projects located within the boundaries of a Gold or Silver Catalyst Project as designated by HCD. A listing of designated catalyst projects is available at http://www.hcd.ca.gov/hpd/catayst_summaries082510.pdf .	25
TOTAL POINTS RENTAL PROJECTS		1,550

Note 1 – Performance Factor #1

A. Credit for good performance on the same project with missed deadlines

The deducted points for each specific project will be restored if all of the following events have occurred by the application due date for the same project:

- the project has been completed, i.e. the Certificate of Occupancy has been issued and provided to HCD and the Notice of Completion has been filed in the Recorder’s Office
- the Project Completion Report, showing that all HOME units are occupied, has been received by HCD, and
- all HOME funds were expended by the original expenditure deadline in the Standard Agreement.

B. Credit for other completed HOME projects

Further, points will be partially restored to the extent there are other completed HOME projects involving the applicant, developer, owner, or managing general partner, awarded between June 1, 2011–December 31, 2016. Points will be restored at the rate of 5 points for each completed HOME project which was awarded HOME funds between June 1, 2011–December 31, 2016.

For example:

One of a developer’s three HOME projects awarded in this timeframe missed the Completion Deadline, resulting in an 80 point deduction.

Two projects awarded HOME funds between June 1, 2011 and December 31, 2016 have been completed.

The 80 point deduction is offset by 10 points (2 projects X 5 points).

C. Special Rules

- Pursuant to Section 8217, Applicants who disencumbered a project contract between June 1, 2011 - December 31, 2016 and their developers, owners, and managing general partners, (if any), for these projects will still receive point deductions according to the above schedule for the deadlines the project did not meet before the contract was disencumbered.
- Point Deductions for Projects Subject to the Hold-Out Penalty (State HOME Regulation 8217(b)(3)). Certain applicants that have not received a waiver of the holdout penalty pursuant to Section 8217(c) may now be eligible to apply because the project in question meets a specific performance standard identified in the State Regulations. This requirement is the project has been completed, occupied, all funds have been expended, and all necessary HOME funds have been drawn pursuant to Section 8217(b)(3)(A). These applicants are still subject to a performance penalty of up to 50 points on their next HOME application following the holdout penalty, along with the project’s developer, owner, and managing general partner pursuant to 8217(b)(3)(B).

State Objectives Table 1: Special Needs Populations

Percent of Units Designated by the Funding Source as Special Needs Units	Point Score
35 percent or more	50
25 percent-34 percent	40
10 percent-24 percent	20

Program Activities Rating Factors
(Total Points Available = 870)

Factor	Sub-factor (if any)	Points
<p><u>Housing Element:</u> The local public entity's adopted housing element is in substantive compliance with State Housing Element Law as of February 02, 2017 the NOFA due date, as defined at Section 8201(t) of the State HOME regulations.</p> <p>Newly-formed cities not required to be in compliance, projects developed on Native American Lands as defined in Section 8201(y)(1) and CHDOs shall receive full points in this category. For more information, see http://www.hcd.ca.gov/hpd/hrc/plan/he/status.pdf.</p>		50
<p><u>Direct HOME Allocation Declined:</u> Activities proposed within a jurisdiction eligible for a direct HOME allocation from the U.S. Department of Housing and Urban Development (HUD) wherein the jurisdiction declined the allocation to preserve eligibility for this NOFA.</p>		50
<p>Activities proposed in a rural community.</p>		50
<p>Prior experience of the applicant in administering HOME and/or other local, State or federal affordable housing or community development programs in the last seven years (calendar years 2010 – 2016).</p>		100
<p>Prior performance of the applicant</p>	<p>Performance Factor #1: Up to 50 points will be deducted for late or missing reports. In assigning these points, HCD will review the applicant's history of submitting quarterly reports and quarterly program income reports (for both Program Activity and Project contracts numbered 13-HOME through 15-HOME), and Annual Performance Reports for FY 13-14, 14-15, and 15-16. HCD reserves the right to deduct points even if the Annual Report is on time but prepared inaccurately.</p>	Maximum deduction of 50 points
	<p>Performance Factor #2: Up to 100 points will be deducted for noncompliance with monitoring or contract requirements identified in the last five years (i.e. Jan. 1, 2012 thru December 31, 2016)</p>	Maximum deduction of 100 points
<p>Note: All Applicants start with 150 points. Performance Points are deductions from the two factors above. The maximum point deduction for Performance is 150 points.</p>		150
<p>Community Need: see Appendix H of this NOFA for Community Need point scoring by activity type. (Located on the HOME NOFA webpage underneath the NOFA)</p>		250

