HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)

Draft Program Guidelines

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Section 1: Introduction

1.1 Overview

(a) California receives funds for the HOME Investment Partnerships Program (HOME) annually from the U.S. Department of Housing and Urban Development (HUD), then distributes those funds throughout the state to benefit low- and very low-income individuals, families, and Households. HOME funds two main types of Activities: Project Activities and Program Activities. These guidelines address Program Activities and will be referred to as "Program Guidelines" throughout this document.

(b) Program Activities include First-Time Homebuyer (FTHB), Owner-Occupied Rehabilitation (OOR), Tenant-Based Rental Assistance (TBRA), and Single-family Development Activities.

(c) The primary focus of HOME Program Activities is to increase the supply of affordable housing for low-income, first-time homebuyers, as well as to support low-income tenants and homeowners to afford or preserve housing.

1.2: Definitions

The definitions found in 24 Code of Federal Regulations part 92 and 2 Code of Federal Regulations part 200 apply to these Program Guidelines regardless of whether these authorities capitalize these terms.

In addition, the following definitions apply to these Program Guidelines. In the event of a conflict between the definitions in 24 Code of Federal Regulations part 92 and these Program Guidelines, the definitions from 24 Code of Federal Regulations part 92 prevails. Where there is a conflict between the definitions in 2 Code of Federal Regulations part 200.1 and 24 Code of Federal Regulations part 92, the definitions of 24 Code of Federal Regulations part 92 prevail.

1. "Act" means the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) (Pub. Law 101-625,104 Stat. 4079, approved November 28, 1990), amended by the Housing and Community Development Act of 1992 (Pub. Law No. 102-550) and any subsequent amendments thereto, which provide for state administration of the HOME Investment Partnership Act Program.
2. "Activity Completion" has the same meaning as "Project Completion" as set forth in 24 Code of Federal Regulations part 92.2 and means that all necessary title transfer requirements and construction work have been performed; the Program or Development complies with all applicable federal requirements (including the property standards listed in 24 Code of Federal Regulations part 92.251); the final drawdown of HOME Funds has been disbursed for the Program or Development; and the Activity Completion information has been entered into the Integrated Disbursement and Information System established by HUD. For TBRA, Activity Completion means the final drawdown has been disbursed.
3. "Activity Report" refers to the Department staff approved by the Department and signed by the HOME Recipient. The Activity Report sets forth the Program criteria approved by the Department at the time of the award of HOME Program funds. The Activity Report may be amended only upon the Department's written

approval.

4. “Annual Action Plan” means the annual plan required by HUD as a part of the Consolidated Plan that outlines how the Department will address its affordable housing and community development needs over a one year period. (24 Code of Federal Regulations part 91.320).

5. “Annual Allocation” means the amount of HUD HOME funding made available to the Department for a particular year for distribution pursuant to the Act.

6. “Applicant” is any State Recipient, Subrecipient, CHDO, and Native American Entity (including both Federally Recognized and Non-Federally Recognized Tribes) which submits an application to the Department for use of HOME Funds within a specified jurisdictional boundary for Eligible Activities pursuant to these Program Guidelines.

7. “Award Letter” means a commitment letter (preliminary award letter) signed by the Director of the Department, or his or her designee, and HOME Recipient indicating that the Department has reserved HOME Funds from a HOME Investment Partnership Agreement for a Program Activity. Award Letters allow the HOME Recipient to enter into a Standard Agreement with the Department. Disbursement of HOME Funds under a Standard Agreement for a Program Activity is subject to meeting the requirements of these Program Guidelines, all pre-disbursement conditions in the Award Letter, all pre-disbursement conditions in the Department’s legal documents for the Program, and all requirements of state and federal law and the Standard Agreement.

8. “Beneficiary” means the person, Household or family receiving the benefit of the HOME Program. Beneficiaries include homebuyers purchasing with FTHB assistance, homebuyers purchasing a unit of Single-Family Housing constructed with HOME assistance, homeowners receiving OOR assistance, and tenants receiving TBRA.

9. “C.F.R.” is the acronym used for the Code of Federal Regulations.

10. “Commitment” means the same as in 24 Code of Federal Regulations part 92.2, which includes but is not limited to a signed and dated legally-binding written agreement (“Standard Agreement”) that meets the requirements of 24 Code of Federal Regulations part 92.504(c) that has been executed between the Department and the HOME Recipient for the purpose of receiving HOME Funds and completing an identifiable HOME-funded Program Activity. To serve as a commitment, the written agreement must meet the requirements in 24 Code of Federal Regulations part 92.504(c).

11. “Community Housing Development Organization” or “CHDO” means a private, nonprofit organization which meets the criteria set forth in 24 Code of Federal Regulations parts 92.2 and 92.300 for certification. A Native American Entity (NAE) may form a CHDO under the provisions of 24 Code of Federal Regulations parts 92.2 and 92.300.

12. “Community Housing Development Organization Set-Aside” or “CHDO Set-Aside” means the federally required 15-percent Set-Aside, pursuant to 24 Code

of Federal Regulations part 92.300, of HCDs Annual Allocation from HUD to fund housing that is developed and owned by CHDOs.

13. “Consolidated Plan” means the plan submitted and approved in accordance with 24 Code of Federal Regulations part 91.

14. “Department" means the State of California Department of Housing and Community Development, which shall serve as a participating jurisdiction as defined by 24 Code of Federal Regulations part 92.2 for the purposes of the HOME program.

15. “Development” or “Single-Family Development” means a site or sites together with any building (including a manufactured Housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME Funds as a single undertaking under the HOME Program Single-Family Development Program Activity. The term Development includes all the activities associated with the site and building, whether that includes acquisition, rehabilitation, and/or new construction.

16. “Director” means the director, acting director, and/or interim director of the Department or a designee.

17. “Disbursement Agreement” means a separate agreement executed between the HOME Recipient and the Department in order for the Department to disburse HOME Funds during construction of a Single-Family Development.

18. “Family” has the same meaning given that term in 24 Code of Federal Regulations part 5.403 and includes, but is not limited to, the following:

    (a) A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person.

    (b) A group of persons residing together, and such group includes, but is not limited to:

    - A Family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the Family).
    - An elderly Family.
    - A near-elderly Family.
    - A disabled Family.
    - A displaced Family.
    - The remaining member of a tenant Family.

19. “First-Time Homebuyer” means an individual, individuals, or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with subsidy assistance, except in the following circumstances:

    (a) A displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who:

- has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period; and
- who has been:
  - unemployed or underemployed;
  - experienced difficulty in obtaining or upgrading employment; and
  - worked primarily without remuneration to care for his or her home and family.

(b) A single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who:

- is unmarried, divorced or legally separated from a spouse; and
- has one or more minor children for whom the individual has custody or joint custody or is pregnant.

(c) An individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with assistance, a dwelling unit whose structure is not permanently affixed to a permanent foundation in accordance with local or state regulations, or not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

20. "First-Time Homebuyer Program" or "FTHB" means a Program Activity to assist homebuyers with HOME Funds for the purpose of acquiring a unit of Single-Family housing as a primary residence.
21. "Funding Target" means a designation of HOME Funds for a specific purpose to meet any Program goals resulting from establishment of a Department policy, as detailed in a HOME NOFA (and/or other Department-approved announcement of funding) and in accordance with the Consolidated Plan and Annual Action Plan.
22. "HOME" is the abbreviation used for the Department-administered federally funded HOME Investment Partnerships Program located at 24 Code of Federal Regulations part 92.
23. "HOME Funds" means funds made available under 24 Code of Federal Regulations part 92.
24. "HOME Investment Partnership Agreement" means the agreement between the Department and HUD pursuant to 24 Code of Federal Regulations part 92.501, granting the Department HOME Funds that the Department makes available to HOME Recipients under a NOFA and/or Award Letter.
25. "HOME Program Manual" means the manual maintained by the Department for the implementation of HOME Program Activities.

26. “HOME Recipient” is an umbrella term used herein to include State Recipients, Subrecipients, CHDOs, and Native American Entities (NAE’s) that receive HOME Funds from the Department to carry out a HOME-assisted Program Activity.

27. “Homeownership” means the same as in 24 Code of Federal Regulations part 92.2.

28. “Household” means one or more persons occupying a Housing unit pursuant to 24 Code of Federal Regulations part 92.2.

29. “Housing” means the same as in 24 Code of Federal Regulations part 92.2. The Department may further modify this definition in the Annual Action Plan, NOFA (and/or other Department-approved announcement of funding).

30. “HUD” means the United States Department of Housing and Urban Development.

31. “Integrated Disbursement and Information System” or “IDIS” is the federal online system established by HUD and used by the Department which manages, and disburses funds, collects data, and reports on the use of HOME Funds.

32. “Local Account” is a separate account maintained by the HOME Recipient into which HOME Funds from the Department, Program Income, funds from resale and recapture, and any payment of interest or other return on the investment of HOME Funds must be deposited.

33. “Low-Income Family(ies)” means the same as in 24 Code of Federal Regulations part 92.2 and means Families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger Families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a Low-Income Family if the individual is a student who is not eligible to receive Section 8 assistance under 24 Code of Federal Regulations part 5.612.

34. “Native American Entity” (“NAE”) means:

    a. An Indian Tribe as defined under 25 U.S.C. § 4103(13)(B) and includes a duly constituted governing body of an Indian Reservation or Rancheria as defined under California Health and Safety Code sections 50077 and 50079.

    b. A Tribally Designated Housing Entity under 25 U.S.C. § 4103(22).

    c. If not a federal -recognized tribe as identified above, entity is either:

        i. Listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to 25 Code of Federal Regulations part 83.1, and has formed and controls a special purpose entity; or

        ii. An Indian Tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of consultation pursuant to California Government Code section 65352.3, and that has formed and controls a special purpose entity in compliance with California Code of Regulations, title 25, section 8313.2.

A NAE that meets the requirements pursuant to (a) and (b) above is considered a Native American Entity-Federally Recognized Tribe (NAE-FRT).

A NAE that meets the requirements pursuant to (c) above is considered a Native American Entity-Non Federally Recognized Tribe (NAE-NFRT).

35. “NOFA” is the acronym used for Notice of Funding Availability. The Department may issue a NOFA to announce that HOME Funds are available, and applications for funding may be submitted, which includes the HOME Programs NOFA.

36. “OTC” means over the counter, describing a manner by which the Department continuously accepts evaluates, and awards applications on a first-come, first-served basis until all available HOME Funds are exhausted.

37. “Owner” means the legal entity that owns the Development for Single-Family Development Activities.

38. “Owner-Occupied Rehabilitation Program” or “OOR” means a Program Activity to assist eligible homeowners rehabilitate and/or reconstruct their homes using HOME Funds.

39. “Performance Milestones” means the indicators, metrics and deadlines of progress and performance that are identified in the application and Standard Agreement. A HOME Recipient’s failure to timely satisfy any one of the Performance Milestones may constitute a breach of contract, as specified in the Standard Agreement, and may entitle the Department to exercise any and all available remedies against the HOME Recipient, including without limitation, recapture of disbursed HOME Program funds and the cancellation of a preliminary award and/or Standard Agreement.

40. “Period of Affordability” also referred to as “affordability period,” means the period of time that affordability requirements apply to HOME-Assisted units pursuant to 24 Code of Federal Regulations parts 92.252 (rental) and 92.254 (homebuyer or homeowner).

41. “Program Activity(ies)” means any eligible HOME activity administered by a HOME Recipient involving FTHB, OOR, TBRA, or Single-Family Development.

42. “Program Income” means the same as defined in 24 Code of Federal Regulations part 92.2.

43. “Reconstruction” means the same as in 24 Code of Federal Regulations part 92.2. Reconstruction is Rehabilitation, except that the property standards for new construction in 24 Code of Federal Regulations part 92.251(a) apply.

44. “Rehabilitation” means all substantial repairs and improvements that are performed using HOME Funds. Rehabilitation Projects must meet the

requirements of 24 Code of Federal Regulations part 92.251(b).

45. “Rural Area” means the same as defined in Health and Safety Code section 50199.21.

46. “Set-Aside” means HOME Funds that are designated to be used for a specific purpose necessary to meet any statutory or regulatory requirement. Pursuant to 24 Code of Federal Regulations part 92.300(a), a Set-Aside of no less than 15 percent of the Department’s HOME allocation is required to be invested in Housing to be owned, developed or sponsored by CHDOs.

47. “Set-Up” means all funding conditions required by HUD and the Department have been met by the HOME Recipient and the Department is ready to create a specific Program Activity in IDIS.

48. “Single-Family Development Activity” means the new construction, rehabilitation, acquisition, and/or conversion of units of Single-Family Housing for sale to low-income, first-time homebuyers.

49. “Single-Family Housing” means a one-to four-unit residence, condominium unit, cooperative unit, combination of manufactured housing and lot, or manufactured housing lot.

50. “Standard Agreement” means the written agreement between the Department and HOME Recipient to formally commit HOME Funds to a Program, in accordance with HUD's definition of Commitment at 24 Code of Federal Regulations part 92.2 and HUD’s requirements for written agreements under 24 Code of Federal Regulations part 92.504(c).

51. “State Recipient” means a unit of general local government, which is designated by California as eligible to receive an award of HOME Funds from the Department as defined in 24 Code of Federal Regulations parts 92.2 and 92.201(b)(2).

52. “Subrecipient” means the same as defined in 24 Code of Federal Regulations par 92.2. and is a governmental entity or nonprofit organization selected by the participating jurisdiction to administer all or some of the participating jurisdiction's HOME programs to produce affordable housing, provide homeownership assistance, or provide tenant-based rental assistance.

53. “Tenant-Based Rental Assistance” or “TBRA” means a Program Activity to provide rent subsidies to eligible Households using HOME Funds.

54. “Very Low-Income Families” means the same as in 24 Code of Federal Regulations part 92.2 and means Low- Income Families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a Very Low-Income Family if the individual is a student who is not eligible to receive

Section 8 assistance under 24 Code of Federal Regulations part 5.612.

1.3: Statutory Authority and Applicable Law

(a) HOME was established through the passage of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. Law 101-625,104 Stat. 4079, approved November 28, 1990 ("NAHA"), as amended by the Housing and Community Development Act of 1992 (Pub. Law No. 102-550), and includes any subsequent amendments thereto, which provide for state administration of the HOME Program. The U.S. Department of Housing and Urban Development published regulations for the HOME Program located in 24 Code of Federal Regulations ("C.F.R.") part 92 (plus any subject matter related HUD-published guidance and decisions) provide the requirements for states to implement the HOME Program, and include applicable rules, proposed rules and/or public notices in the Federal Register.

(b) In California, the state HOME Program is administered by the State of California and its Department of Housing and Community Development ("Department"), pursuant to but not limited to, Health and Safety Code section 50896 et seq., these HOME Program Guidelines ("Program Guidelines"), the State's Consolidated Plan and Annual Action Plan and updates, the HOME Investment Partnership Agreement for the HOME program, HUD CPD Notices, and HUD Policy Memos, as well as any other applicable state or federal laws.

Note: Pursuant to Health and Safety Code section 50896.3, subdivision (b). These Program Guidelines replace and supersede the current state HOME regulations (Cal. Code Regs., tit. 25, § 8200 et seq.) to establish procedures for the award and disbursement of HOME Funds for Program Activities, and create policies and procedures for use of HOME Funds to meet the purposes contained in NAHA. HOME Funds for all other activities (project activities), which include the construction and rehabilitation of multifamily housing, will be administered under the Housing Development Finance Committee (HDFC) regulations. The HDFC regulations replace and supersede the current state HOME regulations for project activities. Any HOME Recipients with Standard Agreements executed prior to the effective date of these Program Guidelines and governed by the state HOME regulations then in effect may optionally request to have their Standard Agreement, and their Program Activities and obligations thereunder, governed instead by the rules, policies, and procedures of these Program Guidelines. The Department may approve the request for specific provisions of these Program Guidelines to replace provisions of the state HOME regulations, or for these Program Guidelines to replace the state HOME regulations in their entirety. The decision of the Department to approve or disapprove of such a request may be given, withheld, or conditioned in the sole and absolute discretion of the Department. In the event of an approval, the Department may require that the HOME Recipient take various legal or administrative actions as a condition of the approval, including but not limited to, modifying its Standard Agreement or executing a new Standard Agreement that replaces the one in existence, and impose any other terms or conditions as the Department deems necessary in its sole and absolute discretion.

1.4: Local, State and Federal Laws

(a) All Department program administrators, applicants, and HOME Recipients must abide by such local, state, or federal laws, as are applicable to any Program Activities using HOME Funds. These may include, but are not limited to, the following: zoning ordinances, building and housing codes, planning, historic preservation, environmental, tenant occupancy, and relocation, and applicable federal requirements.

(b) All Department program administrators, applicants, and HOME Recipients must comply with the following:

1. All applicable federal/state program statutes, federal regulations, and Federal Register notices, as may be updated from time to time.
2. 24 Code of Federal Regulations part 92.
3. All applicable HUD guidance notices and policy memoranda.
4. 2 Code of Federal Regulations part 200 as applicable, including HOME regulations set forth at 24 Code of Federal Regulations part 92.207(e) regarding indirect costs, 24 Code of Federal Regulations part 92.505 regarding applicability of uniform administrative requirements, 24 Code of Federal Regulations part 92.506 regarding audit requirements, and 24 Code of Federal Regulations part 92.507 regarding closeout requirements, cost principles, and audit requirements for federal awards.
5. All applicable state requirements in the California State Administrative Manual, regulations, statutes, Notices of Funding Availability (and/or other Department-approved announcement of funding), Award Letters, Standard Agreements, policies and procedures documents, and these Program Guidelines.

As statutes, regulations and guidance are subject to change, the HOME Program Manual will maintain an updated list of applicable laws that HOME Program Activities must comply with.

(c) It is the intent of these Program Guidelines to complement federal law and federal regulations pursuant to the (State HOME program statute) Health & Safety Section 50896(d).

1.5: Purpose and Scope

California Health and Safety Code § 50896.3 [Amended by Stats. 2022, Ch. 70, §. 35. (SB 197)] authorizes the Department to “adopt guidelines, rules, policies, or standards of general application” to implement the HOME Program. These Program Guidelines establish the rules, terms, conditions, forms, procedures, and other mechanisms that the Department deems necessary to exercise its powers and to perform its duties pursuant to the HOME Program for Program Activities. Notwithstanding any provision in these Program Guidelines to the contrary, in the event of a presidential declaration of disaster, or the Governor proclaims either a “state of war,” “state of emergency” or a “local emergency,” as those terms are defined in Government Code §8558(a-c), the Director, with the prior consent of the Governor pursuant to Gov. Code §8571, may suspend part of these Program Guidelines (pursuant to Government Code §8571 - Suspension of statutes, orders, rules and regulations). Pursuant to this authority, the Director may suspend these Program Guidelines only as necessary to address the above situations and with prior consent of the Governor. The matters set forth herein are regulatory mandates and are adopted as regulations that have the dignity of statutes. *Ramirez v. Yosemite Water Company, Inc.,* 20 Cal.4th 785, 799 (1999).

Section 2: Methods of Distribution (MOD)

2.1: Methods of Distribution

(a) An OTC NOFA is the Department's preferred Method of Distribution (MOD) for FTHB, OOR, TBRA and Single-Family Development Activities. The Department may issue a single OTC NOFA for a three-year cycle. It will use the annual HOME allocation for the first year of the cycle to calculate an estimated total allocation for the three-year NOFA. Eligible applications will generally be funded on a first-come, first-served basis until all funds for the current year have been expended. Once funds have been expended, the Department will cease issuing awards until it receives the subsequent year's HOME allocation. Applications may be submitted at any time regardless of whether funds are currently available. The Department will cease accepting applications once funds for all three years have been fully awarded.

All available funds for Program Activities, including but not limited to the Annual Allocation, reallocated funds, program income, conditional funding and special allocations, may be included in the NOFA at any time during the NOFA cycle.

Once an application is received, it will be reviewed to ensure it meets the threshold requirements described in the HOME Program Manual and the NOFA (and/or other Department-approved announcement of funding), and that the Program Activity is eligible for funding. If an application does not meet the threshold requirements, the Applicant will be notified that their application is ineligible for funding and have the opportunity to appeal.

Notwithstanding any other provision of these Program Guidelines, the Director, or his or her designee, may alter the order by which applications received OTC are reviewed for Applicants requesting funds for an immediate need. The Director's decision to alter the order by which an application is reviewed will be in writing and be made part of the application file.

(b) The Department may issue an OTC NOFA for a single Annual Allocation, or for a portion of an Annual Allocation.

(c) The Department may issue a competitive NOFA for Program Activities for any available HOME Funds, either in addition to or in lieu of the OTC NOFA. When a competitive NOFA is issued, Applicants will have the opportunity to apply for a HOME award. Applications will be reviewed to ensure they meet the threshold requirements, then competitively scored against one another. Applicants may appeal their score using the procedure described in the NOFA. The highest-scoring applications will be offered an award until funds are expended.

(d) Any NOFA (and/or other Department-approved announcement of funding) must specify, the following, as applicable:

1. The approximate amount of Program Activity funds available.
2. List of eligible activities.
3. Time frame for submission of applications.
4. Application requirements.

5. Threshold requirements.
6. Scoring criteria and allocation of rating points, if a competitive NOFA is issued.
7. Matching contribution requirements in accordance with 24 Code of Federal Regulations part 92.220(a), if applicable.
8. Any prohibitions on the uses of funds.
9. Availability of administrative funds.
10. General terms and conditions of funding allocation.

(e) The Department also reserves the right to use any MOD described in its HUD-approved Consolidated Plan or Annual Action Plan, including, but not limited to, program solicitations and direct funding awards.

(f) Applications must be submitted on prescribed forms and consist of the items identified in the NOFA (and/or other Department-approved announcement of funding), and any other information deemed necessary or relevant by the Department, to evaluate the application. This information provides the basis for the assessment identified in the NOFA (and/or other Department-approved announcement of funding) and includes the assurances and agreements necessary for compliance with these Program Guidelines, 24 Code of Federal Regulations part 92, and 2 Code of Federal Regulations part 200.

2.2: Eligible Activities

(a) Eligible Activities include:

<u>FTHB Programs</u>

FTHB Programs provide loans or grants to low-income, first-time homebuyers to assist in the acquisition of a modest single-family home. The homebuyer’s housing payment must be affordable. The homebuyers must remain owner-occupants during the period of affordability, or they will be subject to recapture restrictions.

<u>OOR Programs</u>

OOR Programs provide loans or grants to low-income homeowners to assist in the Rehabilitation and/or Reconstruction of a modest, owner-occupied single-family home. The homeowner’s housing payment must be affordable and they must remain owner-occupants during the period of affordability or be subject to recapture restrictions.

<u>TBRA Programs</u>

TBRA Program Activities provide rental assistance payments for low- and very low-income tenants.

<u>Single-Family Development Activities</u>

The Single-family Development Program Activity provides funds for the new construction, rehabilitation, acquisition, and/or conversion of single-family homes for sale to low-income, first-time homebuyers.

2.3: Eligible Applicants

(a) There are four types of Applicants that are eligible to receive HOME Funds from the Department for Program Activities: State Recipients, Subrecipients, CHDOs and NAEs. Any entity that receives HOME Funds from the Department may be referred to as a "HOME Recipient" throughout these guidelines. The four types of Applicants are:

State Recipients

State Recipients are units of local government that did not receive a HOME allocation directly from HUD.

Subrecipients

Subrecipients are nonprofit organizations, and in some cases units of local government, selected to administer a HOME Program.

CHDOs

CHDOs are a type of nonprofit organization that meet the terms of the definition in 24 Code of Federal Regulations part 92.2. Pursuant to 24 Code of Federal Regulations part 92.300, 15 percent of the Department's Annual Allocation from HUD must be set aside to fund housing that is developed and owned by CHDOs. CHDOs must be certified as a CHDO by the Department, as outlined in the HOME Program Manual, to apply for CHDO set-aside funds.

NAEs

NAEs are federally or non-federally recognized tribes.

2.4: Special Disaster Allocations

(a) Notwithstanding any provision in these Program Guidelines to the contrary, in the event of a special appropriation of emergency supplemental assistance, whether through the HOME Program itself or a subsidiary HOME funding program, or a Presidential declaration of disaster, or a Governor's proclamation of either a "state of emergency" or a "local emergency," as indicated in the Annual Action Plan, the Department may issue a special NOFA. The special NOFA will make HOME Funds available to eligible HOME Recipients located in the areas covered by the disaster or emergency proclamation pursuant to the following special conditions:

1. The Program Activity will be designed to alleviate or mitigate existing conditions that pose a serious actual or impending threat to the health or welfare of the community.
2. The Department will review eligibility documentation for each proposed Program Activity to ensure there is no duplication of eligible costs.
3. The proposed Program Activity will be otherwise eligible for funding under these Program Guidelines, any applicable state or federal law, or be eligible pursuant to other HUD eligibility criteria.

(b) In order to address the most serious emergent health, safety, and general welfare needs, the Director or the Director's designee may make direct funding awards to a designated Program Activity(ies) or area(s). These measures may include, but are not limited to:

1. Utilize any MOD, competitive or OTC, that is available through these Program Guidelines.
2. Limiting a NOFA (and/or other Department-approved announcement of funding) to a designated type of Program Activity or geographic area related to the federal or state disaster or emergency proclamation.
3. Awarding bonus points within a NOFA (and/or other Department-approved announcement of funding) to a designated type of Program Activity or geographic area.
4. Reserving a portion of funds in a NOFA (and/or other Department-approved announcement of funding) for a designated type of Program Activity or geographic area.
5. Establishing maximum award amounts per applicant or type of Program Activity.

(c) To the extent necessary to address serious emergent health, safety, and general welfare needs, and to expedite the process of making awards, the Director may alter or waive state-required criteria. Federal requirements cannot be waived without express written authority from HUD.

2.5: Special Amendments for Disasters or Emergencies

(a) A HOME Recipient may make a written request to the Department to amend or replace a Program Activity set forth in an active Standard Agreement with a Program Activity which would alleviate or mitigate existing conditions which pose a serious actual or impending threat to the health or welfare of the community.

(b) Notwithstanding any other provision of these Guidelines, the Department may approve such a request, and amend the Standard Agreement accordingly if the Department makes the following findings in writing:

1. The HOME Recipient is in an area for which a Presidential declaration of disaster has been made, or the Governor's proclamation of either a "state of emergency" or a "local emergency," as those terms are defined in Government Code section8558, has been made.
2. The amended or replacement Program Activity is designed to alleviate or mitigate existing conditions which pose a serious actual or impending threat to the health or welfare of the community.
3. The amended or replacement Program Activity is otherwise eligible for funding under these Program Guidelines.

Section 3: Administration

3.1: Periods of Affordability

The Periods of Affordability are as follows:

Table 1 – Periods of Affordability	
FTHB Programs and Single-Family Development Activities	
Minimum Period of Affordability (in years)	**HOME Assistance Per-Unit**
5	Under $25,000
10	$25,000 to $50,000
15	Over $50,000
OOR Programs	
Minimum Period of Affordability (in years)	**HOME Assistance Per-Unit**
2	Under $100,000
5	Over $100,000

3.2: Program Income

The HOME Recipient must use Program Income in a manner consistent with the Standard Agreement, 24 Code of Federal Regulations part 92.503, the NOFA (and/or other Department-approved announcement of funding), the HOME Program Manual, and the Department's Program Income Policy as amended from time to time.

3.3: Standard Agreements

(a) The HOME Recipient must enter into a Standard Agreement with the Department.

(b) The Department shall enter into a Standard Agreement as required by 24 Code of Federal Regulations part 92.504 with each HOME Recipient once they demonstrate compliance with the requirements in their Award Letter.

(c) The Standard Agreement shall reserve monies from the HOME Fund in an amount approved for funding by the Department.

(d) The Standard Agreement must require compliance with those provisions of 24 Code of Federal Regulations part 92 and with these Program Guidelines.

(e) The Standard Agreement shall include all the items specified in 24 Code of Federal Regulations part 92.504 and the following provisions:

1. The granting and cancellation of HOME Funds to the HOME Recipient.
2. HOME Recipient responsibilities for Program Activities including time frames and milestones as set forth in the application.
3. Reporting requirements, including performance reports, as necessary to ensure compliance with 24 Code of Federal Regulations parts 92.508 and 92.509.
4. Requirements related to ensuring that the HOME assistance to the Program Activity is not more than is necessary to provide affordable housing, if applicable.
5. Project set-up and fund disbursement requirements, including provision of evidence that program is ready to be set up and provisions for receipt, use, and accounting of HOME Funds.
6. Provisions for securing loans and grants pursuant to the security and regulatory documents described in this section.
7. The actions to be taken to mitigate environmental effects in accordance with the requirements set forth in 24 Code of Federal Regulations part 92.352.
8. Requirements that the HOME Recipient shall comply with the Fair Housing Act (42 U.S.C. §§ 3601-19.), as amended, and the implementing regulations at 24 Code of Federal Regulations part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin and will affirmatively further fair housing; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification; and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.
9. Requirements that the HOME Recipient shall protect individuals from discrimination under federal and state laws as set forth in Government Code section 11135, et seq., and 24 Code of Federal Regulations parts 92.350 and 92.351.
10. Remedies available to the Department in the event of a violation, breach, or default of the Standard Agreement, including repayment of all costs of enforcement.
11. Requirements that the HOME Recipient permit the Department, HUD, or their designated agents and employees the right to inspect the Program Activity, Single-Family Development, and/or all books, records, and documents maintained by the HOME Recipient in connection with the local HOME Program.
12. Requirements that the State Recipient submit audits pursuant to 24 Code of Federal Regulations part 92.506 and 2 Code of Federal Regulations part 200.
13. Any other terms and conditions as required by local, state, or federal law, which are necessary to ensure compliance with the requirements of the Act.
14. Other requirements deemed necessary by the Department.

NOTE: The Standard Agreement may be delayed if the HOME Recipient does not timely provide the Department with all required entity resolutions and other entity documentation (e.g., operating agreement, articles or organization, bylaws, articles of incorporation, 501(c)(3) certification, certificate of good standing, limited partnership agreement), in form and content acceptable to the Department in its sole discretion, which evidences that the Awardee has the legal authority to contract with the Department.

(f) The Standard Agreement must be executed by the HOME Recipient within 90 days of receipt. Failure to execute and return the Standard Agreement(s) to the Department within 90 days may result in award cancellation. The HOME Recipient must remain a party to the Standard Agreement for the full term of the Standard Agreement. Removal of the HOME Recipient from the Standard Agreement is prohibited unless the Department in its sole discretion provides written approval in advance.

(g) The Department has no obligation to execute a Standard Agreement with a HOME Recipient if the Department cancels the HOME Recipient's award.

3.4: Matching Contributions

(a) The Department may require the HOME Recipients to provide 25-percent minimum matching contributions for Program Activities to meet the state's requirements as specified in 24 Code of Federal Regulations parts 92.218, 92.219, 92.220, and 92.221.

(b) Documentation that the matching contribution requirements have been met are subject to verification by the Department.

(c) If matching contributions are provided in the form of affordable housing that is not assisted with HOME Funds pursuant to 24 Code of Federal Regulations part 92.219(b), the HOME Recipient must establish a procedure to monitor these projects and ensure continued compliance with the requirements contained in 24 Code of Federal Regulations part 92.219(b).

(d) Matching contributions may be waived or modified as specified in a NOFA (and/or other Department-approved announcement of funding) in the following circumstances:

1. If the matching contribution requirements of 24 Code of Federal Regulations part 92.218 are waived or modified by Congress or are modified by HUD pursuant to 24 Code of Federal Regulations part 92.222, the Department will waive or modify the matching contribution requirements of subsection (a) above for funds affected by the federal action.
2. If the Department identifies other eligible sources of the matching contribution that can be used to meet part or all of the matching contribution requirements of 24 Code of Federal Regulations part 92.218, the Department will modify the matching contribution requirements of subsection (a) above to the extent possible for funds affected.
3. Modified matching contribution requirements for each Annual Allocation as provided for in subsections (d)(1) and (d)(2) above must be stated in the NOFA

(and/or other Department-approved announcement of funding) issued by the Department unless such matching requirements are waived or modified by HUD after issuance of a NOFA (and/or other Department-approved announcement of funding). In that case, the Department must notify HOME Recipients of the modification of matching contribution requirements through written notice.

(e) HOME Funds used for administrative and planning costs pursuant to 24 Code of Federal Regulations part 92.207, CHDO operating expenses pursuant to 24 Code of Federal Regulations part 92.208, CHDO capacity building pursuant to 24 Code of Federal Regulations part 92.300(b), and CHDO project-specific assistance where repayment is waived pursuant to 24 Code of Federal Regulations part 92.301 must not be required to be matched.

(f) Contributions which must not be considered as HOME matching contributions pursuant to 24 Code of Federal Regulations part 92.220(b) are as follows:

1. Contributions made with or derived from federal resources or funds, regardless of when the federal resources or funds were received or expended and including Community Development Block Grant funds.
2. The interest rate subsidy attributable to the federal tax exemption on financing or the value attributable to federal tax credits.
3. Owner equity or investment in a project.
4. Cash or other forms of contributions from Applicants for, or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for assistance for a HOME-assisted program or project. This does not apply to contractors who do not own any HOME Project or Development who are contributing professional services or to persons contributing sweat equity in accordance with 24 Code of Federal Regulations part 92.220(a)(9).

3.5: Activity Set-Up

Upon notification from the Department to the HOME Recipient that the Department is ready to set up the Program Activity in the HUD's Integrated Disbursement and Information System, the HOME Recipient must submit to the Department the activity set-up information required by 24 Code of Federal Regulations part 92.502(b) prior to the first disbursement request.

3.6: Administrative and Pre-Award Cost Limitations

The HOME Recipient may expend a portion of the HOME award for administrative costs in the manner specified in the HOME Program Manual, the NOFA (and/or other Department-approved announcement of funding). Such costs are subject to the requirements of 24 Code of Federal Regulations part 92.207.

Pre-award costs are subject to 24 Code of Federal Regulations part 92.206(d)(1) and may be permitted by the HOME Program Manual and/or the NOFA (and/or other Department-approved announcement of funding), if applicable to the Program Activity.

3.7: Draws

(a) The Department must draw down HOME Funds by check or electronic fund transfer from the HOME Funds for a Program Activity that has been set up pursuant to Section 3.5.

1. The Department must make requests for disbursement directly to the Integrated Disbursement and Information System after receipt of a certification of the payment request. The original certification must remain in the permanent project file.
2. The Department may withhold release of disbursements from HUD's Integrated Disbursement and Information System in the event the HOME Recipient fails to comply with the terms of the Standard Agreement, these Program Guidelines, and/or the requirements of 24 Code of Federal Regulations part 92.
3. Monthly draws during the construction phase of the Single-Family Development may be requested by the HOME Recipient for eligible costs in accordance with 24 Code of Federal Regulations part 92.206 and the Standard Agreement.

(b) Funds drawn from the HOME Funds must be expended for eligible costs within fifteen (15) days of the draw pursuant to 24 Code of Federal Regulations part 92.502(c)(2).

(c) Interest earned on HOME Funds drawn from the Integrated Disbursement and Information System and remaining in the Local Account no more than fifteen (15) days must be retained in the Local Account and used for eligible HOME costs.

(d) Unused funds, including interest earned on funds beyond the 15 days, must be returned to the Department to be returned to the Integrated Disbursement and Information System.

(e) All HOME Funds in the Local Account must be disbursed in accordance with 24 Code of Federal Regulations part 92.502(c)(3).

(f) Within 90 days of receipt of the final drawdown request for a Program Activity, the HOME Recipient must provide to the Department the Activity Completion Report required by 24 Code of Federal Regulations part 92.502(d). If the HOME Recipient does not comply with this requirement within the 90-day period, the Department may suspend further project set-ups or disbursements for the HOME Recipient until an Activity Completion Report is received and accepted by the Integrated Disbursement and Information System.

3.8: Loan and/or Grant Retention

(a) There will be a retention of funds as described in this section, unless the Department releases retention in order to expend the program loan and/or grant funds prior to HUD's regulatory expenditure deadline reflected in the performance milestones outlined in the Department's loan and/or grant documents.

(b) For Single-Family Development Activities, 5 percent of the total award amount may be retained and released after the Department approves the Activity Completion and loan closing requirements in the Standard Agreement.

(c) For all other Program Activities 5 percent of the Administrative and Planning Grant may be retained and released after the Department approves the Activity

Completion and loan closing requirements in the Standard Agreement.

3.9: Reporting and Record Keeping

(a) HOME Recipients must meet the reporting and record keeping requirements outlined in the HOME Program Manual and 24 Code of Federal Regulations part 92.508.

(b) At any time during the operation of the local HOME program, the Department may perform or cause to be performed a financial audit pursuant to 24 Code of Federal Regulations part 92.506 of any and all phases of program operations. At the Department's request, the HOME Recipient must provide, at its own expense, an independent financial audit prepared by a certified public accountant.

3.10: Repayment and Recapture

(a) Repayments, Program Income, and recaptured funds are subject to the requirements of 24 Code of Federal Regulations part§ 92.2, 92.252, 92.254, 92.300, and 92.503 and these Program Guidelines.

(b) Unless permitted by the Standard Agreement, whenever a HOME Recipient receives Program Income or recaptured funds, it must remit those funds directly to the Department for deposit into the Department's local HOME account.

(c) If requested by the HOME Recipient and expressly permitted in the HOME Standard Agreement, the Department may allow Program Income and recaptured funds to be deposited into the HOME Recipient’s Local Account, subject to the requirements of 24 Code of Federal Regulations parts 92.502(c)(3), 92.503(a)(1), and 92.504(c)(6).

(d) HOME Recipients that retain Program Income, proceeds from the investment of HOME Funds, and/or recaptured funds must submit quarterly reports and an annual report documenting all Local Account activity. Failure to submit the required reports may result in ineligibility to apply for future HOME awards. Continued failure to comply with all federal and state requirements for use of these funds will result in a termination of the Standard Agreement.

3.11: Cancellation and Defaults

(a) In the event of a breach or violation by the HOME Recipient of any of the provisions of the Regulatory Agreement, a Declaration of Restrictive Covenants, the Note, the Deed of Trust, the Standard Agreement, and/or any other agreement between the Department and the HOME Recipient pertaining to the Program Activity, the Department may give written notice to the HOME Recipient to cure the breach or violation within a period of not less than 15 business days, and for Native American Entities, 20 business days. If the HOME Recipient does not cure the breach or violation to the satisfaction of the Department within the specified time, or have remediation plan approved by the Department, the Department, at its option, may declare a default under the relevant document(s) and may seek legal remedies for the default including, without limitation, the following:

1. The Department may accelerate all amounts due under the loan and demand immediate repayment thereof. Upon the HOME Recipient’s failure to repay such

accelerated amounts in full, the Department may proceed with a foreclosure in accordance with the provisions of the Deed of Trust and state law regarding foreclosures.

2. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to operate the Program.
3. The Department may terminate the document(s) the HOME Recipient breached or violated.
4. Any other right or remedy available to the Department at law, in equity, or pursuant to the terms of the Standard Agreement and any agreement related thereto.

(b) The Department may require the HOME Recipient to amend any agreement between the Department and the HOME Recipient if the Department determines that it is necessary for the HOME Recipient or Program to comply with these Program Guidelines or all applicable state and federal law.

(c) The Department may cancel or reduce an award to a HOME Recipient under any one or more of the following conditions:

1. The HOME Recipient or Program Activity is not in compliance or will not comply with these Program Guidelines, NOFA (and/or other Department-approved announcement of funding), or any applicable state and federal law.
2. The Department terminates the Standard Agreement with the HOME Recipient.
3. Implementation of the Program Activity does not, or will not, comply with the program deadlines, Program Milestones, time frames, and/or goals stated in the HOME Recipient's application, Standard Agreement, these Program Guidelines, or NOFA (and/or other Department-approved announcement of funding).
4. Failure to meet the Department's Environmental Provision clearance may result in cancelling the HOME award.
5. The HOME Recipient has not fulfilled the special conditions specified in its Activity Report or Standard Agreement.
6. The HOME Recipient requests to have its award cancelled.
7. There has been a material change, not approved by the Department, in the Program Activity, the principals or management of the HOME Recipient or Program Activity.
8. If any permanent financing is withdrawn from the Single-Family Development without replacement permanent financing sufficient to complete the Development.
9. If the HOME Recipient made any misrepresentation of any material fact to the Department in connection with its application or concealed any material fact to the Department.
10. HUD reduces or eliminates the Department's HOME Funds under a HOME

Investment Partnership Agreement and there are not enough funds available for the Program Activity, or if the Department's authority to administer HOME is limited or withdrawn by HUD or the State of California.

(d) At least 15 days before the effective date of the Department's cancellation or reduction of an award, the Department must provide written notice to the HOME Recipient of the Department's intent to cancel or reduce the award. The HOME Recipient may appeal the Department's decision to cancel or reduce an award to the Deputy Director of the Division of Federal Financial Assistance or their designee.

(e) Upon the Department's written notification to the HOME Recipient that the HOME Recipient's HOME funding has been terminated, reduced, or cancelled, the HOME Recipient must:

1. Complete all work affected by the Department's termination, reduction, or cancellation that is in progress.
2. Terminate any other activities that were to be paid for with HOME Funds affected by the Department's termination, reduction, or cancellation of the HOME Recipient's HOME Funds.

(f) If the Department terminates an agreement or cancels an award under this section, the Department may penalize the HOME Recipient, such as assigning it negative points to future applications for HOME Funds and/or any other funding program offered by the Department or barring it from applying for HOME Funds and/or any other Department loan program funds under future NOFAs (and/or other Department-approved announcement of funding).

(g) All required repayments must be returned to the Department within 30 calendar days.

(h) Once a Program is awarded Department funds, the HOME Recipient's acceptance of these Department funds is acknowledging that the Program Activity as submitted to and approved by the Department is the Program Activity that is to be funded. Any bifurcation of the Program Activity would make that award null and void, as the awarded Program Activity is no longer feasible as originally submitted and approved and because the awarded funds are unable to be assumed or assigned.

3.12: Standards for HOME Recipient Financial Management Systems

The HOME Recipient must establish and maintain their financial management systems for HOME awards in accordance with 2 Code of Federal Regulations part 200, Subpart D, any conditions in the Standard Agreement, and as specified in the HOME Program Manual.

3.13: Financial and Performance Reporting Requirements

HOME Recipients must report on financial matters and program performance as required by the HOME Program Manual.

3.14: Monitoring of Program Performance and HOME Recipient Activities

The Department and HOME Recipients must monitor the performance of Program Activities on an ongoing basis, according to the monitoring terms of the HOME Program

Manual and Standard Agreement, to assure that time schedules and expenditures are being met.

3.15: Procurement and Conflict of Interest

The Department and HOME Recipients must comply with the Conflict of Interest Requirements in 24 Code of Federal Regulations part 92.356, 2 Code of Federal Regulations part 200.317, and 2 Code of Federal Regulations part 200.318.

3.16: Closeout

The Department and HOME Recipients must carry out all closeout activities in accordance with 24 Code of Federal Regulations part 92.507 and as specified in the HOME Program Manual.

3.17: False, Fictitious or Fraudulent Claims

(a) This information is current as of the date of these Program Guidelines. This information is subject to change over time. Please verify with HUD for updates.

(b) Warning: Any person who knowingly makes a false claim or statement to HUD or the Department may be subject to civil or criminal penalties under 18 U.S.C. §§ 287 and 1001 and 31 U.S.C. § 3729.

(c) Detecting, Preventing, and Reporting Fraud

1. Fraud is a white-collar crime that has a devastating effect on HOME because HOME Beneficiaries are victims of this crime when HOME is abused.
2. The Department wants to stop any criminal assault on the HOME program it administers, and in doing so all HOME Funds go to people it was designed to help and improve their living conditions.

(d) Combatting Fraud

1. The U.S. Department of Housing and Urban Development (HUD) Office of Inspector General (OIG) is committed to protecting HUD's programs, operations, and beneficiaries from dishonest individuals and organizations.
2. HUD cannot combat fraud alone.
3. HUD relies on the Department and HOME Recipients to combat HOME program fraud. HUD also relies on HOME Recipients and Beneficiaries.
4. The HUD OIG Hotline number is 1-800-347-3735. This is the primary means to submit allegations of fraud, waste, abuse, mismanagement, or Whistleblower related matters for HOME to the Office of Inspector General.
5. HUD OIG accepts reports of fraud, waste, abuse, or mismanagement in the HOME program from HUD employees, anyone administering the HOME program, anyone working in HOME, contractors, and the public.
6. You can report mismanagement or violations of law, rules, or regulations by HUD employees or program participants.
7. Fraud, Waste and Abuse in HOME and its operation may be reported in one of

the following four (4) ways:

Email to: hotline@hudoig.gov

By Phone: Call toll free: 1-800-347-3735

By Fax: 202-708-4829

By Mail: U.S. Department of Housing & Urban Development

HUD OIG, Office of Investigation, Room 1200

Field Office

One Sansome Street

San Francisco, CA 94104

(213) 534-2518

3.18: Loan Servicing and Management for Beneficiaries

(a) Pursuant to the provisions of 24 Code of Federal Regulations part 92.254(a)(5)(ii)(B)(2) and the Department's HOME Resale and Recapture Policy set forth in the Appendix C to the State's Consolidated Plan, if all the conditions of subsection (b) are met, the Department, in its sole and absolute discretion, may elect to take one or more of the following actions for a HOME FTHB or OOR loan:

1. Extend the loan
2. Modify the loan
3. Forgive, waive or write-off the loan (which could have tax consequences to the borrower)
4. Discharge the loan

(b) The Department may take one of the actions in subsection (a) only if all of the following conditions are met:

1. The loan made to a Beneficiary shows a balance due to the Department or a HOME Recipient;
2. The loan was either never subject to a federal period of affordability according to 24 Code of Federal Regulations part 92.254, or the applicable federal period of affordability has expired; and
3. The action is allowable under the "Loan Servicing and Management" section of the current version of the HOME Program Manual as well as the authorities stated in subsection (a) above.

(c) This section applies to HOME FTHB or OOR loans that were originated both prior to, as well as after the effective date of these Program Guidelines.

Section 4: Native-American Entities (NAEs)

4.1: Overview

(a) NAEs, whether federally recognized or non-federally recognized, are eligible to apply for a HOME Program award.

(b) If applying for CHDO set-aside funds, the NAE must form a CHDO, and the CHDO must be the Applicant.

4.2: AB 1010

The state requirements set forth in these Program Guidelines and the HOME NOFA (and/or other Department-approved announcement of funding) are subject to AB 1010 (Chapter 660, Statutes of 2019) and recent legislative change in AB 1878 (Chapter 266, Statutes 2024) which is set forth in Health and Safety Code section 50406, subdivision (p), (a) where the provisions of Tribal Law, Tribal governance, Tribal charter, or difference in Tribal entity or legal structure would cause a violation or not satisfy the requirements of these Program Guidelines or the HOME NOFA (and/or other Department-approved announcement of funding), said requirements may be modified as necessary to ensure program compatibility; and (b) where the provisions of Tribal Law, Tribal governance, Tribal charter, or difference in Tribal entity or legal structure or agency create minor inconsistencies (as determined by the Director of the Department or a duly authorized designee thereof) with the requirements set forth in these Program Guidelines and the HOME NOFA (and/or other Department-approved announcement of funding), the Department may waive said requirements, as deemed necessary, to avoid an unnecessary administrative burden. Matters set forth or otherwise provided for in these Program Guidelines and the HOME NOFA (and/or other Department-approved announcement of funding) that may be modified or waived include, without limitation, threshold and scoring requirements and any other matter set forth in Health and Safety Code section 50406, subdivision (p)(2).

NAEs are accordingly encouraged to discuss any such potential modifications or waivers and their option in that regard with the Department prior to application submission.

NAEs must be aware that AB 1010 and AB 1878 cannot be used to modify or waive any federal HOME statutory or regulatory requirements. There may be other federal law(s) that could provide a basis for possible modification or waiver of some federal requirements for NAEs. These Program Guidelines control in the event of any conflict between the content of the NOFA (and/or other Department-approved announcement of funding), the application, or application materials.

4.3: Administrative Waivers and Modifications

If any requirement in these Program Guidelines, the NOFA (and/or other Department-approved announcement of funding), or the HOME Program Manual prevents NAEs from accessing or implementing HOME Program Funds, the NAE may request that the Department waive or modify that requirement administratively instead of or prior to beginning the Department's AB 1010 process. To be eligible for an administrative waiver or modification to a requirement, the requirement must create a barrier to access, program incompatibility, and/or unnecessary administrative burden due to, the factors listed below. Any modification must ensure program compatibility and any waiver must be based on an inconsistency between the HOME Program requirements and the factors listed below and the waiver may only occur to avoid a barrier to access, a program incompatibility, and/or an unnecessary administrative burden.

When these conditions are met, the Department may issue a waiver or modification in writing by the Branch Chief or their designee. Any said modification or waiver under this section shall be on a case-by-case basis.

Only the requirements established in these Program Guidelines, the NOFA (and/or other Department-approved announcement of funding), or the HOME Program Manual are eligible to be waived or modified under this section. The NAE and the Department must comply with all federal requirements under 24 Code of Federal Regulations part 92, other federal law, UMRs (Cal. Code Regs., tit. 25, §§ 8300-8318) and any regulations promulgated by the Housing Development and Finance Committee. Any request to waive or modify any UMR or regulation promulgated by the Housing Development and Finance Committee shall be made pursuant to AB 1010 (Health and Safety Code section 50406, subd. (p)(1)).

Requests for administrative waivers or modifications may be based on any of the following:

(a) Historical disenfranchisement, illegal termination, historical land dispossession, and other historical accounts recognized in Executive Order N-15-19 and GovOps Policy Memorandum dated October 1, 2022 and the following:

1. Lack of a tribal landbase
2. Location of tribal lands in non-economically viable and disadvantaged areas
3. Increased rate of poverty
4. Increased rate of homelessness
5. Restraint on financial resources
6. Restraint on experience in Program Activities
7. Disestablishment of tribal lands and tribal communities
8. Other circumstances caused by the historical maltreatment of Indian tribes.

(b) In furtherance of the goals, objectives and other purposes set forth in Executive Orders B-10-11 and N-15-19, the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA) and the Indian Self-Determination and Education Assistance Act of 1975, as amended, including:

1. Tribal Self-determination
2. Tribal Self-governance
3. Tribal Self-sufficiency
4. Tribal sovereignty
5. Tribal jurisdiction within Indian Country

6. Re-establishment of ancestral, aboriginal territory or tribal homelands
7. Re-establishing or restoring tribal communities
8. Promoting, protecting and restoring tribal cultural practices

(c) Additional factors:

1. Location of the Program Activity within the NAE's:
    i. Ancestral or aboriginal territory, or tribal homelands
    ii. Indian area as defined under NAHASDA
    iii. Encompassed by the Indian Housing Plan as defined under NAHASDA
    iv. A tribal service area established under tribal law providing affordable housing services to tribal members and Indians