<u>**HOME INVESTMENT PARTNERSHIPS PROGRAM**</u>

# 2009 Notice of Funding Availability

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June 1, 2009

NOTICE TO ALL POTENTIAL APPLICANTS
RE: NOTICE OF FUNDING AVAILABILITY

**HOME INVESTMENT PARTNERSHIPS PROGRAM – $60 Million**

The Department of Housing and Community Development (Department) 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 $60 million is available for this NOFA. The sources of funds for this NOFA are the Federal Fiscal Year (FFY) 2010 HOME allocation, as well as disencumbered funds from previous contracts.

The application deadline is August 14, 2009. The application materials for rental projects, FTHB projects, and program activities will be available on June 1, 2009 from the state HOME website at www.hcd.ca.gov/fa/home. Please review these documents carefully before submitting an application. If interested in submitting an application, we strongly encourage attendance at one of the upcoming training workshops scheduled in June. These workshops will cover HOME requirements and information needed to submit a successful application. The workshop schedule is included in the NOFA. Advance registration is required to ensure adequate seating and materials.

If you have any questions, please contact HOME Program staff at (916) 322-0356.

Sincerely,

Chris Westlake
Deputy Director

**NOTICE OF FUNDING AVAILABILITY (NOFA)**
**HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM**
**JUNE 1, 2009**

**Anticipated Funding Level: A minimum of $60 million**

# I. OVERVIEW

A. Changes from Last NOFA

In general, the 2009 HOME NOFA is similar to the 2008 HOME NOFA, but some changes have been made, with the most significant as follows:

For Both Project and Program Activities

- All CHDOs wishing to apply under this NOFA must submit certain information for annual certification. (See Section IV.)

- To avoid unanticipated problems meeting federal overlay requirements, combining HOME Program Income and/or homebuyer program and project funds is permitted only with prior, written, HOME Management approval. (See Section IX.)

- FTHB resale and recapture requirements have been clarified. (See Section XVII.)

- The procedure for determining compliance with A-133 Audit requirements was changed so that the Department can gather accurate information regarding A-133 audit submissions. (See Section XXI.)

- Points for missed monthly (projects only), quarterly, Program Income and Annual reports will now be deducted based on the applicant's overall performance for the periods specified, rather than a set amount of points deducted for each missed report. (See Section XXII.)

For Projects

- Pending regulation changes will permit State Recipients and CHDOs that have missed three deadlines on a project to request a waiver of the holdout penalty for three missed project deadlines so that they may apply under this NOFA if the waiver is approved. (See Section XVI.)

- Rental Rehabilitation with or without Acquisition Projects may apply under this NOFA. There will be no separate NOFA for rental rehabilitation projects.

- Activity Delivery and Administration/CHDO Operations amounts can now be taken on top of/in addition to the NOFA loan limits. (See Section IX.)

- Additional clarification was provided regarding compliance with the National Environmental Policy Act (NEPA). Pursuant to federal requirements and our advance warnings last year, HOME will no longer accept purchase agreements as site control unless the project has already received its NEPA approval. (See Section XIX.)

- Timing of set-up package submittals is discussed. (See Section XX.)

- For rental projects, facilities such as a laundry room or a community room that are not located in residential buildings are ineligible HOME costs. These facilities are also ineligible costs if they are available to the general public, and not just project residents and their guests. (See Section VI.)

- Two new State Objective rating categories have been added. Both are consistent with the State policy objectives stated in the State's Annual Action Plan to HUD. (See Section XXII.) One factor, related to geographic diversity, relates only to rental projects. The other factor, prioritizing "shovel-ready" projects, is for all FTHB and rental projects.

- For rental rehabilitation projects, changes have been made to the requirements for receiving $4 million. (See Section IX.)

- For rental rehabilitation projects, additional relocation requirements are discussed regarding a required transition reserve to prevent economic displacement as a result of increased rents. (See Section XIX.)

- For rental rehabilitation projects where HOME is the only source of financing, additional clarification is provided regarding (1) needed third-party construction inspections, and (2) HOME restrictions on the funding of reserve accounts. (See Section V.)

<u>For Program Activities</u>

- The Administration amount for TBRA has been reduced. (See Section XI.)

- The Activity Delivery Cost allowance for Infill activities has been reduced. (See Section XII.)

- Funding for the American Dream Downpayment Initiative (ADDI) has been eliminated. No ADDI funding will be available.

B. This Notice of Funding Availability (NOFA) for the HOME Investment Partnerships Program (HOME) makes a minimum of $60 million available for rental projects, homebuyer projects, and program activities. The sources of funds for this NOFA are the Federal Fiscal Year (FFY) 2010 HOME allocation, as well as disencumbered funds from previous contracts.

The application deadline is August 14, 2009. The application materials for all activities will be available on June 1, 2009 from the state HOME website at www.hcd.ca.gov/fa/home. Please review these documents carefully before submitting an application.

Applicants and their developers are strongly encouraged to attend one of the upcoming training workshops scheduled in June. These workshops will cover HOME requirements and information needed to submit a successful application. The workshop schedule is included in the NOFA. Advance registration is required to ensure adequate seating and materials.

HOME funds are made available pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, and are available to eligible local governments (State Recipients) and nonprofit organizations certified with the Department as Community Housing Development Organizations (CHDOs).

All applicants under this NOFA are responsible for administering and completing the HOME activity, including ensuring compliance with federal overlay and administrative requirements. This responsibility includes: implementing the project or program activity as proposed in the application (or as approved in the Department's Loan and Grant Committee Project Report for rental projects), which is included as part of the Standard Agreement, compliance with reporting requirements, managing fund disbursement and accounting, preparing work specifications, loan processing, conducting inspections, and ensuring that all HOME requirements are met for the entire affordability period.

Funding will be allocated into separate allocations for programs, rental projects, and first-time homebuyer (FTHB) projects, Based on expected demand, we anticipate that approximately $24 million will be available for programs, $33 million for rental projects, and $3 million for FTHB projects.

However, for project applications, if there are insufficient funds remaining in the applicable allocation to fully fund the next highest rated application, the Department may chose not to fund that application if it determines that the proposed project is not feasible with a partial HOME award.

If there is less demand for any of the allocations relative to the minimum amounts available, the remaining funds may be: (i) transferred to another allocation; (ii) made available under a subsequent NOFA; or (iii) a combination of both (i) and (ii). If there is less demand for programs than 40 percent, some portion of funds will be made available to unfunded program applicants on an over-the-counter (OTC) basis beginning in

November 2009 pursuant to Section IV (E) of this NOFA. However, based on last year's demand, all available funds for 2009 will likely be requested and allocated under this NOFA; therefore there may not be an OTC NOFA for programs in 2009.

C. Allocation of Funds

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

- Fifteen percent (15 percent) will be reserved for Department-certified CHDOs.
- Fifty percent (50 percent) will be reserved for rural areas.

In addition, $4 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. See Section X of the NOFA for more information.

D. Eligible Activities

HOME funds may be used for applications pursuant to this NOFA for the following activities.

Rental Projects

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

FTHB Projects

- New construction or acquisition/rehabilitation/conversion to develop a specified number of units 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 - funds can be used for downpayment assistance and up to $10,000 of rehabilitation assistance per dwelling, or for infill new construction of up to four dwellings on each vacant site. Note: no more than $10,000 per home of rehabilitation may be performed from all sources (i.e. the $10,000 limit is not just a HOME funding limit.)

  Note: pursuant to federal HOME regulation 92.214 (a) (6) prohibiting the same unit from being assisted twice, jurisdictions cannot do rehabilitation of more than $10,000 on a FTHB unit by classifying this activity as owner-occupied rehabilitation until the affordability period of the FTHB activity has expired. At close of escrow, the FTHB unit must meet all applicable code requirements,

- 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. No activity, whether program or project, involving mobile or manufactured housing should be presumed eligible without a specific written finding by HOME management. The Department encourages you to request such a finding prior to submitting the HOME application, but this request should be received well before the application deadline.**

E. Funding Announcements and Standard Agreements

The Department intends to send conditional reservation ("award") letters to successful program activity applicants by approximately October 16, 2009, and to successful rental and FTHB project applicants in December or January. These letters may specify conditions to be met prior to execution of the Standard Agreement. The Department intends to issue state HOME Standard Agreements approximately 45-60 days following issuance of the conditional reservation letter to State Recipients and CHDOs that have demonstrated compliance with the requirements, if any, in the conditional reservation letter.

## II. REGULATORY AUTHORITY

A. HOME regulations and NOFA suspension/amendment: All applications under this NOFA are governed by the state HOME regulations and the federal Final HOME Rule dated September 16, 1996, as amended. If the federal or state statutes or regulations governing the program or its funding are modified by Congress, the Department of Housing and Urban Development (HUD), the State Legislature, or the Department prior to completion of work under the local HOME Program, the changes may become effective immediately and apply to the activities funded under this NOFA. The Department reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA. If such an action occurs, the Department will notify interested parties.

B. Amended State HOME regulations: The State HOME Program is in the process of adopting revisions to the state HOME regulations related to waiver of the holdout penalty for projects. We anticipate final approval of the regulations through the Office of Administrative Law prior to the issuance of the HOME awards. Awards under this NOFA will be subject to the amended regulations, if adopted. Proposed regulatory amendments are available on the HOME web site at: http://www.hcd.ca.gov/fa/home/homeregchange.html.

C. This NOFA does not include the text of all applicable regulations that may be important to particular projects. For proper completion of the application, the Department **strongly** 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).

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.

*If the application is prepared without reading the NOFA, the application, the HOME regulations, and the UMRs, if applicable, it is likely that the application will be deficient, which could result in loss of points or disqualification.*

For your convenience, hyperlinks to the HOME regulations and UMRs are provided below. Attendance at an application training workshop is also **strongly encouraged**.

State HOME regulations - (Revised in 2007) - http://www.hcd.ca.gov/fa/home/State_HOME_Regs.pdf**.**

Uniform Multifamily Regulations - http://www.hcd.ca.gov/fa/MultifamilyRegs-Adptd092903.pdf

Federal HOME regulations - http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/finalrule.pdf

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

## III. APPLICATION PROCEDURES, FINAL FILING DEADLINE, AND AWARD ANNOUNCEMENTS

A. **One original application and one complete copy** must be **received** by the Department **no later than 5:00 p.m.** on **August 14, 2009.**

**Applicants must submit separate application forms in separate binders for each activity (e.g., Project 1, Project 2); however, program activities can be combined together in one binder as noted below. In addition, rental project applicants must submit one copy of their completed Universal Application Form, HOME Supplement, and all Project Development Plan (PDP) Attachments on a PC-compatible Compact Disc (CD). Please keep the electronic worksheets unprotected so staff can use them to prepare Loan Committee project reports. Please**

**separate all application attachments and major sections of an application binder with tabbed dividers.**

Examples:

1. An applicant wishes to submit one application for a rental project and a homebuyer project. The applicant will submit four separate binders and a PC-compatible CD as follows:

   a) One original and one complete copy of the Universal Rental Project Application Form, the HOME Supplement, and all attachments for the rental project, (binders 1 and 2);
   b) One copy of the Universal Application Form, the HOME Supplement, and all Project Development Plan (PDP) Attachments on CD and;
   c) One original and one complete copy of the FTHB Application Part A, Part B, and all attachments for the homebuyer project (binders 3 and 4).

2. An applicant wishes to submit one application for a rental project and FTHB and TBRA program activity funds. The applicant will submit four separate binders and a PC-compatible CD as follows:

   a) One original and one complete copy of the Universal Rental Project Application Form, the HOME Supplement, and all attachments for the rental project, (binders 1 and 2),
   b) One copy of the Universal Application Form, the HOME Supplement, and all Project Development Plan (PDP) Attachments on CD; and

   c) One original and one complete copy of the Program Activities Application Part A, Part B, and all attachments for the FTHB and TBRA activities (binders 3 and 4). Please Note: separate and complete Part B Application Forms must be submitted for each program activity for which you are applying (e.g. 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. (See Section X of the NOFA for more information.)

Applicants are strongly advised to ensure that their application is in final form before it is submitted to the Department. See paragraph C below for more information.

Applications mailed via the U.S. Postal Service must be received by the HOME Program no later than 5:00 p.m. on August 14, 2009 and must be addressed to:

Department of Housing & Community Development
Division of Financial Assistance
HOME Program
P.O. Box 952054, Suite 390-3
Sacramento, CA 94252-2054

Applications sent using private carriers or delivered in person must be received by the HOME Program no later than 5:00 p.m. on August 14, 2009. If applications are personally delivered, the receptionist will date stamp the application and provide a receipt as proof of delivery. The delivery address is:

Department of Housing & Community Development
Division of Financial Assistance
HOME Program
1800 Third Street, Room 390
Sacramento, CA 95811

Applications that do not meet the filing deadline requirements will be denied funding. Applications must be on the forms provided by the Department and these forms cannot be altered or modified by the applicant.

B. CHDO Certification

- Normal CHDO Certification Process: Applicants for CHDO certification, (and CHDOs that have a certification that will expire before the NOFA final filing date), must have their certification documents received by the Department for review no later than June 12, 2009 for new CHDO applications and July 10, 2009 for CHDO recertifications to enable staff sufficient time to evaluate the documents. All CHDO applicants will need to complete the CHDO self-certification contained in the application to certify that they have either 1) submitted their application for certification by the deadline, or 2) they are currently certified and are in compliance with the certification requirements.

- New Annual Recertification for Existing CHDOs. HUD requires, at a minimum, 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, 2009 that is planning to apply under this NOFA, please submit the documents set forth in NOFA Appendix G with your HOME Application by the application deadline of August 14, 2009.

C. Application form: It is the applicant's responsibility to ensure that its application is clear, complete, and accurate in all respects, and that it is received by the Department on or before the final filing deadline. After the application deadline, HOME staff may contact applicants to ask where in the application specific information is located. In addition, the Department 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 the Department 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 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.

D. Rental Project Scoring, Notification, and Appeal Process

Rental Project applications will be rated in the first two to three weeks after August 14. E-mails will be sent to the authorized representative and contact person listed in your application describing the scores and the specific facts upon which those scores were determined. Applicants will then have five working days to submit an appeal to the e-mail provided by the Department. A final determination will be provided within five working days from receipt of the appeal.

E. Department Loan and Grant Committee

HOME rental projects will be reviewed by the Department's Local Assistance Loan and Grant Committee. Only applications with the highest scores will be presented to Loan Committee. HOME intends to take all high scoring applications to the November 13, 2009 Loan Committee meeting. However, HOME reserves the right to take some or all applications to the December 17, 2009 Committee meeting if necessary due to anticipated increases in staff workload, or other factors. Representatives of the applicant and the developer **are strongly encouraged** to attend the Loan Committee meeting if their project is recommended for funding.

Applicants whose applications are recommended for funding will receive a Department project report, (sent to the e-mail addresses provided in the application), approximately two to three weeks prior to the Loan Committee meeting.

Applicants will only be presented to Loan Committee if HOME has determined that the project is financially feasible. HOME reserves the right to request information, in addition to that contained in the application, to make this determination. If the applicant is unable to provide the necessary information for HOME to make a feasibility determination in time to prepare a project report for the January 2010 Loan Committee meeting, the project will be rejected pursuant to Section 8212(6) (A).

Note: applicants must notify the Department of any project changes that occur after the HOME application has been submitted. If a rental project is being recommended to the HCD Loan and Grant Committee, it is vital that the Department be fully knowledgeable about the project, so the project report is complete and up to date. Information provided after the application has been submitted will be used solely for evaluating financial feasibility and preparing the project report. No information received after the HOME application due date will be used in scoring the application. Failure to notify the Department of any project changes may be considered a "material misrepresentation of fact" resulting in negative performance points on future HOME applications pursuant to 8212 (d) (1) (A) (ii).

Subsequent to the Loan Committee meeting, the Department will issue award letters. These award letters may specify special conditions to be met prior to issuance of the Standard Agreement. Please make sure that all members of the development team and your consultants are aware of these conditions as soon as possible.

## IV. <u>ELIGIBLE APPLICANTS</u>

A. Applications for <u>HOME funds</u> will be accepted <u>only</u> from:

- Cities and counties that have not been designated as Participating Jurisdictions by HUD;
- Cities that are not participants in an urban county agreement with a county that is a HUD Participating Jurisdiction;
- Cities and counties that are not participants in a HOME consortium;
- Projects must be located in an eligible city's incorporated area or an eligible county's unincorporated areas; and
- CHDOs with a current Department certification that are proposing activities located in eligible cities or counties as described above that are included in the CHDO's certified service area. All non-profit applicants that are certified by the Department as CHDOs by August 14, 2009 shall be considered eligible to apply for funding as a CHDO.

  <u>Note</u>: Pursuant to HUD requirements that existing CHDOs be recertified every time they are awarded HOME funds, existing CHDOs that were last certified prior to January 1, 2009 who are planning on applying for HOME funds must submit annual recertification documentation with their HOME application, due August 14, 2009. The documentation that must be submitted is set forth in NOFA Appendix G. (Note: this certification process is different than that for new CHDOs and for existing CHDOs whose 3-year certification expires by August 14, 2009.)

  <u>New CHDO applicants</u> must submit their CHDO Certification application by June 12, 2009. If an <u>existing CHDO's three-year certification expires</u> prior to August 14, 2009, the CHDO's recertification application must be submitted by July 10, 2009. Applications to add geographic areas must also be submitted by July 10, 2009. Applications from these applicants will not receive a conditional reservation of funds until the Department approves the CHDO certification, recertification, or addition of another geographic area.

B. <u>Eligible jurisdictions for FY 2009 are listed in Appendix A of the NOFA.</u> If the city or county is not listed in Appendix A, but you believe it should be, please submit by July 16, 2009 a copy of the consortia or urban county agreement for your county indicating that your city or county is not a participant for FY 2009 funding.

**Note: Pursuant to pending changes to State HOME Regulation Section 8217, State Recipients 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 beyond the control of all of the following parties: applicant, developer, owner, managing general partner. Contact State Recipient Projects Manager Ferol Kimble, (916) 327- 8571 or CHDO Manager Moira Monahan, (916) 327- 3618, to discuss.**

C. Minimum Expenditure Requirement for Program Activities

Pursuant to state HOME regulation Section 8204(b), applicants with current HOME program activity contracts are eligible to apply for HOME program activity funds only if they have expended, by the application due date of August 14, 2009, at least 50 percent of the total of all program activity funds originally awarded in their current HOME contracts. A current HOME contract is one where the expenditure deadline has not yet occurred by August 14, 2009, i.e. generally a contract numbered, "06", "07", or "08-HOME". Applicants that do not have a current "06", "07", or "08-HOME program activity contract, or applicants that have met the 50 percent expenditure requirement as set forth above, may apply for HOME program activity funds.

"Expended" funds are the total of all valid draws received at HCD by the application deadline. Additionally, a valid draw is limited to the amount needed for reimbursement of actual expenses for work that has been completed. The term "work completed" varies by activity, as follows: for FTHB activities: escrow has closed, for TBRA rent subsidies: payments were paid; and, for OOR construction/rehabilitation: payments were made for work competed and inspected.

D. Over-the Counter (OTC) Program Funds

Pursuant to state HOME regulation Sections 8212.1 (b) and 8212.1 (c), applicants, with current HOME Program activity contracts that will not meet the 50 percent expenditure requirement by August 14, 2009, (see Section D above), may be eligible to apply for program funds on an over-the-counter (OTC) basis, pursuant to the terms of this NOFA governing program activity funds, beginning in November 2009 once they have reached the 50 percent expenditure level. The exact amount of OTC funds available will be determined based upon several factors, including, but not limited to, (i) the amount of funds in the program activity allocation after funding all eligible program activity applicants, (ii) the amount of funds requested by rental and FTHB projects that remain unfunded after fully utilizing the project allocation amounts, (iii) the anticipated demand/eligibility for OTC program funds, and (iv) the anticipated timing and amount of the initial NOFA for the next funding cycle.

Applicants receiving a program activity award for an application submitted for the August 14, 2009 application deadline are not eligible to apply for OTC funds.

Applications submitted in response to the OTC process will be evaluated to make sure they meet all threshold requirements. Pursuant to 8212.1, OTC funds will be divided equally among all eligible applicants requesting these funds. The sole purpose of the OTC funding is to allow applicants with current HOME contracts additional time to reach the 50 percent expenditure level. The OTC funds are not intended for those new to the program. Potential applicants without a 2006, 2007, or 2008 HOME contract for program activities may not apply for OTC funds. Instead, these applicants must apply by August 14, 2009.

OTC Funding Announcements and Standard Agreements - The Department intends to send conditional reservation letters to successful OTC applicants within 45 days following the receipt of an eligible and complete application. The Department intends to issue state HOME Standard Agreements to successful OTC applicants within 90 days following the receipt of a complete and eligible application from those applicants that have demonstrated compliance with the requirements, if any, of their conditional reservation letter.

CHDOs – Generally, all non-profit applicants that are certified by the Department as CHDOs by the date their OTC application is submitted to the Department shall be considered eligible to apply for funding as a CHDO. All CHDO certification or recertification applications, or applications for changes in the CHDOs service area, must have been submitted to the Department at least 30 days prior to submission of their OTC application. However, there are no CHDO applicants eligible for OTC funds under this NOFA because there are no CHDOs with 06, 07 or 08 program activity contracts as noted above.

Set-Asides - Since no CHDO applicants are currently eligible for OTC funds, there will be no OTC funds set-aside for CHDOs in order to meet the 15% CHDO set-aside requirement pursuant to 24 CFR 92.300.

There will be no separate rural set-aside for OTC funds. HOME will meet its rural set-aside pursuant to 8212.1 (e) by looking at the total of all HOME funds awarded for programs and projects.

## V. ELIGIBLE ACTIVITIES

A. To be eligible for funding under this NOFA, an application must be for one of the following types of projects and/or programs activities. Rental and homebuyer projects with multiple sites must have common ownership and financing. HOME funds may be used to assist Indian tribes consistent with applicable state and federal requirements. However, pursuant to state HOME regulation 8204, only cities, counties, and CHDOs may submit a HOME application. Indian tribes themselves are not eligible applicants.

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.

2. 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 a "rehabilitation with acquisition project" only if there will be an acquisition of real property, not just a change in partnership interests.

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

   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) the Department will require rental rehabilitation project applicants to submit a reliable physical needs assessment (PNA) as part of the financial feasibility analysis process conducted before the application goes to the Loan and Grant Committee.

   To expedite the review process, applicants are strongly encouraged to prepare and submit the PNA as part of the application. Note: application rating points are awarded for submitting an acceptable PNA because the results of the PNA are critical to evaluating the readiness of the project.

   Rehabilitation Projects where HOME is the Only Source of Financing

   Inspections. In CHDO rehabilitation projects where HOME is the only source of financing, (typically rehabilitation projects with no acquisition involved), the project will be required to hire a third-party construction inspector to perform monthly inspections prior to draw down of HOME funds. State Recipient projects may use the jurisdiction's own staff to perform these inspections if they choose not to hire a third-party construction inspector.

   Capitalized Operating and Replacement Reserves – Pursuant to Section 92.214 of the federal HOME regulations, HOME dollars 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, these costs must be paid by the developer.

3. Homebuyer Projects - The development of a specified number of units 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 HOME funds 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.

3. Program Activities

State Recipients may apply for any number of HOME-eligible program activities set forth below. CHDOs are only eligible to apply for FTHB infill program funds described in paragraph (1) under "FTHB Program" below. Applicants are encouraged to select carefully the activities that best meet their housing needs and are feasible in their community. Applicants must submit program guidelines and feasibility information for each activity for which they are requesting funds.

Eligible program activities are as follows:

1. FTHB Program: (1) Funds provided to a city or county to provide loans to homebuyers for acquisition and up to $10,000 for rehabilitation of a dwelling that the homebuyer selects from the open market; and (2) Funds provided to a HOME-eligible 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 NEPA requirements, an Environmental Assessment (EA) will be required if more than four units, regardless of funding source, are developed within 2000 feet of one another.

   Pursuant to state regulation 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/syndicated/documents/mbs/apeprices/archives/cur30.html, plus 100 basis points. See Section XIII for more information regarding FTHB primary loan terms.

2. 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 and improvements necessary to meet federal, state, or local building codes.

3. Tenant-Based Rental Assistance (TBRA) Program – funds provided to a

HOME-eligible city or county to administer a program to provide rent subsidies to eligible households. 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.

B. Transferring Funds between Program Activities

As in previous years, State Recipients with two program activities in a single Standard Agreement must submit a written request for Department approval to shift funds between these activities. The written request should be for the Standard Agreement as a whole, and not adjusted for each individual set-up. As soon as you can, you should decide how you would like these funds allocated for the life of this Agreement, and then contact your HOME Representative to make necessary adjustments. You may adjust this allocation occasionally throughout the life of your Agreement, but not each time you submit a setup. (We have to adjust our database each time you adjust your allocation.) Note: due to Departmental database requirements, there will no longer be a combined FTHB/OOR activity. These activities must be individually applied for, and will be individually named in the HOME Standard Agreement.

State accounting requirements now disallow the shifting of funds between program activities not already named in the Standard Agreement without first doing a contract amendment. Contractors will be held to the expenditure deadline in the original contract. You should plan on the contract amendment process taking two to three months to complete. If you are requesting a change that requires a contract amendment, please ensure that the original authorizing City/County Resolution also authorizes amendments.

## VI. INELIGIBLE USES OF FUNDS

- HOME funds cannot be used to refinance existing debt.

- As a general rule, with the exception of National Environmental Policy Act (NEPA) environmental review expenses, HOME funds cannot be used for expenses incurred prior to the execution of the state Standard Agreement. However, on a case-by-case basis, HOME Management may permit reimbursement for other expenses incurred after the date of the award letter and prior to the effective date of the Standard Agreement.

- Rental Rehabilitation and/or Acquisition programs are ineligible under this NOFA.

- Projects involving only acquisition are ineligible under this NOFA.

- **NOTE: Pursuant to HOME federal Regulation 92.206 (a) (4), It has been recently determined that 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 also, 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, if any, 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 below under HOME grants. Loans provided to homebuyers must meet the requirements set forth in Section XIII. below.

B. HOME Grants: HOME assistance must be provided in the form of a grant exclusively for tenant-based rental assistance, relocation payments, lead-based paint hazard evaluation and reduction activities, and specified Activity Delivery Costs. Activity Delivery Costs are further defined by the term "related soft costs" in the HOME Final Rule at 92.602(b) (3).

   HOME funds for Activity Delivery Costs must be drawn down at the same time as 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 the Department. For FTHB projects, special care should be taken in requesting Activity Delivery funds during the construction phase. If the entire amount of the construction loans should inadvertently not roll over into permanent loans, the proportional amount of Activity Delivery Costs must be repaid to the Department. More information on Activity Delivery Costs is set forth in Section XII. below.

D. 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. These expenses must be reasonably necessary for the proposed project and will only be paid when 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.

## VIII. MINIMUM AND MAXIMUM AMOUNTS 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 Tenant-Based Rental Assistance funds.**

The maximum amount of HOME funds invested in a project shall not exceed the following: (1) the per-unit dollar limits (221(d) (3) limits), established by HUD under 24 C.F.R. 92.250; (2) pursuant to 92.205(d), 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; and (3) the total amount of eligible costs necessary, (when combined with other financing and assistance), to accomplish the following:

A. 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. See HUD CPD Notice 98-1 for more information.

B. For rental activities of five or more units, achieve a debt-service coverage ratio in accordance with the UMR Section 8310, and adequate cash flow to ensure long-term financial feasibility.

C. FTHB and OOR activities are subject to the Maximum Purchase Price/After Rehabilitation Value Limits under Section 203(b) of the National Housing Act. The current 203(b) limits can be found in **Appendix D** of the NOFA.

   Jurisdictions may request a waiver of their county's 203(b) limits if they think that these limits do not fairly reflect the cost of available housing in their county and should be increased. Contact the appropriate HOME Representative to request a waiver of your 203(b) limits. Note: If the jurisdiction has already received a 203(b) waiver, the new limit will not appear in Appendix D.

D. The total amount of HOME Funds, including Activity Delivery Costs, per project cannot exceed the amount listed in the HUD 221(d)(3) subsidy limits and a subsidy layering review specified in 24 C.F.R. 92.250 of the federal regulations. **See Appendix C of the NOFA for the 221(d) (3) limits.** 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 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

Applicants 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
- CHDO applicants that did not receive a 2008 HOME project award may submit an application for two rental projects; however, each rental project must consist of a single site.

- Separate application forms must be submitted for each project. Each project will be rated and ranked separately.

No applicant may request project funding for more than two sites. (Program activities are not site-specific; therefore, this limitation does not apply to them.)

The maximum application amount is determined by adding the maximum amounts for each of the activities in the application. Please Note: For project applications, Activity Delivery Costs and Administration/CHDO Operations are now in addition to the loan amounts listed in this section below.

Note also that pursuant to 24 CFR 92.250, before committing funds to a project, the Department must evaluate the project in accordance with guidelines that it has adopted for this purpose 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 221(d) (3) limits. (See Appendix C of the NOFA.)

Individual activity limits are as follows:

**Rental New Construction Project Loan Limits**

- $2, 000,000: Projects using 9 percent Low Income Housing Tax Credits.
- $4,000,000: Projects not using 9 percent Low Income Housing Tax Credits.

New this year: these are the maximum HOME loan amounts and **do not** include the amount of HOME funds available for Administration, CDHO Operations, or Activity Delivery. For example, an applicant may request $2.1 million for a 9% tax credit project, i.e. a $2 million loan, and $50,000 for Administration and $50,000 for Activity Delivery (for a State Recipient project applicant). See Sections XI and XII of the NOFA for Administration/CHDO Operations and Activity Delivery amounts.

The Department may increase or decrease the maximum HOME loan amount (e.g. $2 or $4 million) on a case by case basis, before or after the project is presented to the loan committee, as necessary for project feasibility or to prevent oversubsidizing a project. The Department is aware of the reduced pay-in yield from tax credit investors, and reserves the right to award additional funds as necessary (and as available) to make up for some or all of the resulting loss of net tax credit equity investment.

CHDO rental project applicants that request HOME funds solely for permanent financing may request a higher funding amount to cover the cost associated with having a larger private construction loan. Up to an additional $300,000 may be requested. In requesting this higher amount, the CHDO must explain the methodology used for calculating the requested amount based on additional financing costs. Please provide this explanation in the Applicant Notes section of the Development Budget. The Department reserves the right to adjust this amount in consultation with the applicant.

Deep Targeting:

Rental new construction projects requesting funds for Deep Targeting can request up to an additional $1,000,000 on top of the maximum application amount for their activity shown above.

Projects with 9 percent tax credits and rental rehabilitation with or without acquisition projects are <u>not eligible</u> for Deep Targeting funds under this NOFA. See Section X for more information on Deep Targeting.

**<u>Rental Rehabilitation with or without Acquisition Loan Limits</u>**

- 2,000,000: Projects using 9 percent Low Income Housing Tax Credits, or projects that do not meet the requirements outlined below.

- 4,000,000: Projects that meet both of the following requirements. First, there is no use of 9 percent Low Income Housing Tax Credits. Second, either:

  a) 80 percent of all units in the project will be restricted to tenants with household incomes of less than 50 percent AMI at initial occupancy with rents restricted at no more than the low HOME rent level; or

  <u>b) 80 percent of all units in the project will have project based rental assistance.</u> Tenant-paid rents for these units will be restricted to no more than the Low HOME rent level. If the tenant-paid rents meet this Low HOME rent level due to rental assistance payments, the rental assistance must be renewable. Tenant incomes at initial occupancy, must also be at the 50% income level.

  <u>New this year: these are the maximum HOME loan amounts and **do not** include the amount of HOME funds available for Administration, CDHO Operations, or Activity Delivery. For example, an applicant may request $2.1 million i.e. a $2 million loan, and $50,000 for Administration and $50,000 for Activity Delivery (for a State Recipient</u>

project applicant). See Sections XI and XII of the NOFA for Administration/CHDO Operations and Activity Delivery amounts.

The Department may increase or decrease the maximum HOME loan amount (e.g. $2 or $4 million) on a case by case basis, before or after the project is presented to the loan committee, as necessary for project feasibility or to prevent oversubsidizing a project. The Department is aware of the reduced pay-in yield from tax credit investors, and reserves the right to award additional funds as necessary (and as available) to make up for some or all of the resulting loss of net tax credit equity investment.

**Homebuyer Project Loan Limits**

- Up to $80,000 per unit for up to a maximum of $2,000,000 per project

  This per-unit amount is only for the purpose of calculating the maximum amount to be requested under this NOFA. The federal 221(d) (3) and 203(b) 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.

  New this year: these are the maximum HOME loan amounts and **do not** include the amount of HOME funds available for Administration, CDHO Operations, or Activity Delivery. For example, an applicant may request $2.1 million, i.e. a $2 million loan, and $50,000 for Administration and $50,000 for Activity Delivery (for a State Recipient project applicant). See Sections XI and XII of the NOFA for Administration/CHDO Operations and Activity Delivery amounts.

  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 (e.g. subdivision) is not permitted without prior written HOME Management authorization.

  **See Section XIX of the NOFA for information on federal prevailing wage requirements as they pertain to homebuyer projects.**

**Program Activities Funding Limits**

$800,000: HOME-eligible applicants for all program activities.

Note: these maximum amounts include Administration and Activity Delivery. The maximum total HOME award for a HOME eligible program application is $800,000 including Administration and Activity Delivery.

Program Income: Federal HOME regulations require that all Program Income be expended prior to drawing down HOME Funds. Program Income may not be “banked” or set-aside in re-use 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 Program Income on hand. **State Recipients**

**with Program Income must consider this when deciding how much to request in this funding round.** If a project applicant historically receives a substantial amount of Program Income, the applicant should contact its HOME Representative to discuss ways to use this Program Income in a way that does not impede the ability to draw down funds awarded pursuant to this NOFA.

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 (e.g. subdivision) is not permitted without prior written HOME Management authorization.

## X. DEEP TARGETING

A total of $4 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 without 9 percent Tax Credits, that set a portion of their units rents at 40 percent of Area Median Income (AMI) or below for 55 years.

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.

**Applicants requesting funds for Deep Targeting that fail to submit two sets of documents as set forth in the Deep Targeting Documentation Checklist may not be considered for funding.**

The Department expects to see a reduction in rents, debt service, operating reserve, and private financing commitments as a result of reduced private debt. Except for differences attributable to reduced private debt, 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 should be explained in the application.

Although the project unit mix may change with Deep Targeting funds, the total number 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 there are funds 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 below), and that also rate high enough 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 expressed as a percentage of AMI, the more Deep Targeting points that will be awarded.

In evaluating the level of Deep Targeting for the award of points, projects will only be compared with other projects in counties with similar HOME income limits. Fifty percent of funds will be made available to projects in counties in which the HOME fifty percent area median income (AMI) limit for a household of four is below $35,400, and fifty percent of the funds will be made available to projects in counties whose HOME fifty percent area median income limit for a household of four is $35,400 or more. Unused funds in one group will be made available for the other group.

All Deep Targeting units must remain deeply targeted for a full 55-year affordability period, pursuant to a HOME regulatory agreement or a regulatory agreement held by another government financing agency.

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.

**It is highly recommended that applicants wishing to apply for Deep Targeting funds contact Christina DiFrancesco at (916) 322-0918 for assistance.**

## XI. ADMINISTRATIVE AND CHDO OPERATIONS FUNDS

The following limits apply to the amount of State Recipient administrative and CHDO Operations funds applicants may receive:

Projects:

A. State Recipient applicants receiving up to $1,000,000: up to $25,000 of administrative funds.
CHDO applicants receiving up to $1,000,000: up to $75,000 of CHDO Operations funds.

B. State Recipient applicants receiving $1,000,000 or more: up to $50,000 of administrative funds.
CHDO applicants receiving $1,000,000 or more: up to $100,000 of 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).

Tenant-Based Rental Assistance applicants may request up to an additional 9.5 percent of the total application amount for administration, for a total of 12 percent for administration. Due to state budget constraints, the total amount of administration for this purpose is $300,000. If there is more demand for TBRA Administration funds than available, only the highest rated TBRA applicants will receive Administration funds in addition to the regular 2.5% allocation. All TBRA applicants will receive at least the basic 2.5% amount for Administration.

Actual eligible expenses must be incurred to draw down these funds.

## XII. ACTIVITY DELIVERY FUNDS (State Recipients only, except where noted)

Projects

Rental and homebuyer projects may have 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 are 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. See 24 C.F.R. 92.206 (d) (6) and 92.206 (f) (2) for a description of the types of expenses which may be charged to Activity Delivery. 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.

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.

- Up to 6.5 percent of the HOME construction financing amount for FTHB activities involving infill new construction. CHDO applicants may also receive up to this amount for infill program activities.

- Up to 6.5 percent of the HOME loan/grant amount for all other activities.

Pursuant to federal regulations, Activity Delivery funds cannot be received for TBRA activities.

## XIII. FIRST TIME HOMEBUYER LOAN TERMS

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

Pursuant to the state HOME regulations, first-time homebuyers shall be required to obtain financing from primary lenders in addition to HOME financing. The amount of the HOME loan is limited to the minimum amount necessary as determined by a subsidy layering analysis and underwriting of the project. Loans from primary lenders shall comply with the following requirements:

a) The loan must have a minimum loan term of 30 years;
b) No temporary interest rate buy-downs are permitted; and
c) The loan must be fully amortizing and have a fixed interest rate that does not exceed the current market rate, established by the 90-day "posted yield" for thirty year fixed rate loans, as established by Fannie Mae at https://www.efanniemae.com/syndicated/documents/mbs/apeprices/archives/cur30.html, 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:

Pursuant to state HOME regulation 8205(b), loans made by State Recipients assisting first-time homebuyers 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.

Additional CHDO HOME Loan Terms:

Except as otherwise provided by state HOME regulation Section 8206.1(c), (regarding CHDO qualification to retain loan repayments), the Department shall be the beneficiary on all HOME promissory notes and deeds of trust or HOME deed restriction documents.

Pursuant to state HOME regulation 8205(b), loans to first-time homebuyers financed from the CHDO set-aside shall bear a simple interest rate of 3 percent per annum, computed from the date the Deed of Trust is recorded on the property. Interest and payments shall be deferred for the term of the loan. Commencing on the 11th anniversary of the recordation date, an amount equal to 10 percent of the accrued interest shall be forgiven each year, so that on the 20th anniversary of the recordation date, all interest will have been forgiven if the borrower is in compliance with the requirements stated in the Department's loan documents.

## XIV. ARTICLE XXXIV (Rental Projects only)

Article XXXIV of the California Constitution requires public entities to obtain voter approval before they "develop, construct or acquire a low-rent housing project." However, there are some exemptions to Article XXXIV. Health and Safety Code Section 37001 lists a number of project types that are not considered "low rent housing projects." The most typical exemption is subdivision (a)(1), which exempts projects that receive no property tax exemption, other than the welfare exemption, and in which no more than 49 percent of the units will be occupied by persons of low income.

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 public body lenders, 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 the Department can determine if sufficient Article XXXIV authority exists for the proposed units.

For State Recipients, the Article XXXIV legal opinion letter must be from your local counsel. Since the Department is not the lender for State Recipient projects, the Department 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 the law.

For CHDOs, the Article XXXIV legal opinion letter must be from the local government counsel where your project is located or from your own attorney, and must state the reasons why your project is exempt from or complies with Article XXXIV. Since the Department is the lender in CHDO projects, the Department must agree with the legal opinions and conclusions in these letters in order for them to be acceptable. Because of the detailed nature of the Department's regulatory agreements for HOME, the Joe Serna, Jr. Farmworker Housing Grant Program (Serna), and the Multifamily Housing Program (MHP), it is the

Department's opinion that CHDO projects assisted by these programs are "developed" by the Department within the meaning of Article XXXIV.

For more information regarding Article XXXIV see NOFA Appendix B.

## XV. MATCH REQUIREMENTS

**All match requirements are waived for applications submitted under this NOFA.** However, all eligible HOME match that applicants will 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 the Department can bank any additional match and can continue to waive match. Such match sources include match 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. The Department will review all project Set-up and Completion Report forms to make sure that all reportable match has been included. See http://www.hcd.ca.gov/fa/home/ for a HOME match calculation tool (located under "Additional Resources"). The HOME Contract Management Manual also contains additional information and resources on Match. See http://www.hcd.ca.gov/fa/home/manual/14/.

## XVI. TIME FRAMES 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, 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.

Pursuant to pending changes to State HOME Regulation 8217 (c), State Recipients and CHDOs may also request that these holdout and point deduction penalties be waived when it is determined that violation was clearly outside of the control of all of the following parties: the applicant, developer, owner, managing general partner. Contact State Recipient Projects Manager Ferol Kimble, (916) 327- 8571, or CHDO Projects Manager, Mora Monahan (916) 327-3618, if you think you will be needing a waiver of point penalties or the holdout penalty for missed project deadlines.

Program Activities

All program activity funds awarded under this NOFA must be expended by the end of the 30th month following the award date. For awards made in October 2009, the expenditure deadline is projected to be April 30, 2012. (Awards made under the OTC process will have a different award date and expenditure deadline. See Section IV. E. of the NOFA for more information.

## XVII. AFFORDABILITY REQUIREMENTS

A. Rental New Construction Activities

- All rental new construction housing projects shall have affordability periods of 55 years.

B. Rental Rehabilitation Activities

- All rental rehabilitation housing projects with acquisition shall have affordability periods of 55 years.

- Rehabilitation without Acquisition

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

Rent levels shall be restricted for the periods of affordability set forth above at the lesser of the rent levels permitted pursuant to the federal HOME regulations, or other rent levels approved by the Department. (Generally speaking, the other rent levels approved by the Department would be 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.

B. Homebuyer Activities

Homebuyer activities shall have minimum affordability periods of:

- 5 years for under $15,000 of HOME funds per unit;
- 10 years for $15,000 to $40,000 of HOME funds per unit; and

- 15 years for more than $40,000 of HOME funds per unit.

Homebuyer Recapture and Resale 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 funds are subject to recapture (i.e., the HOME loan must be paid off when the home is sold). However, exceptions may be requested by State Recipients or CHDOs to provide HOME-assistance in the form of a resale loan for limited equity forms of ownership such as cooperatives and community land trusts. (i.e., the purchase price may be restricted with HOME funds staying available for the next borrower). See below under "Resale Loans" for more information.

**Recapture Loans**: Under this option, where the local jurisdiction or the CHDO is not imposing its own resale controls, 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 superior 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.

**Resale Loans**: Although the HOME loan is generally not a resale loan, a State Recipient or CHDO may impose its own resale controls on a State Recipient or CHDO project when there is a source of subsidy other than State HOME funds. The source of subsidy need not necessarily be an actual loan; it may be in the form of an inclusionary housing ordinance which requires homes to sell below fair market value.

The city, county or CHDO must request advance State HOME Program approval of the resale agreement and HOME loan documents to ensure that all of these documents meet the requirements of the HOME Final Rule and the State HOME Program. Loans made under this option may be assumable by subsequent HOME eligible purchasers, even if the HOME loan is a recapture loan.

Pursuant to State Regulation 8206.1, HOME loans may be made in the form of resale loans on projects involving limited equity forms of ownership, such as community land trusts or cooperatives, when market conditions indicate that resale controls may be necessary to keep units affordable to subsequent purchasers, and when adequate protections of the State's financial interest in the project exist. However, resale HOME loans are not recommended, because if the loan must be repaid during the federal period of affordability, and the net proceeds are insufficient to repay the full HOME loan amount, the shortfall must be repaid to HUD.
The Department may impose additional procedures as necessary to expedite loan assumptions or new loan processing on loans made with CHDO set-aside funds.

Approval of the use of resale controls will be at the sole discretion of the Department. Please see Management Memo 04-01, available at the state HOME website at http://www.hcd.ca.gov/fa/home/mmemo/04-01.pdf for specific federal and state HOME requirements regarding the resale agreements.

D. Owner-Occupied Rehabilitation Activities

Owner-Occupied Rehabilitation activities have no affordability period. However, HOME funds must be provided as loans. Therefore, the loan must be repaid if the home is no longer occupied by the owner.

## XVIII. 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 "Technical Guide for Determining Income and Allowances for the HOME Program," which is available upon request from the Department.

## XIX. COMPLIANCE WITH OTHER FEDERAL REQUIREMENTS

All activities funded with HOME funds or HOME Program Income are required to comply with HOME's federal "overlay" requirements, 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, Section 504 and the Americans with Disabilities Act, Section 3 (employment of low income persons), OMB Circular A-133 audit, and debarment. Failure to comply with federal overlays could result in significant cost increases to your project, rejection of your HOME application, or loss of points in current or future HOME funding rounds. Below is a brief discussion of overlay issues relevant to the application.

### NEPA

Once you submit your HOME Application until issuance of the NEPA Authority to Use Grant Funds, the applicant and any participant in the development process must not take any choice limiting actions.

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 once you submit the HOME application, and before the Authority to Use Grant funds is issued. "Choice limiting actions" includes 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) done by anyone.

Note however, that 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 the development of plans and strategies; (e.g. 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 only to 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.

All site control documents must be conditional in nature so as not to provide a legal claim to any amount of HOME funds to be used for the specific project or site until the environmental review process is satisfactorily completed. The agreement must explicitly state that it is conditioned on the Responsible Entity's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. The cost to secure the site control document must also 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

Pursuant to HUD requirements that site control be conditional until NEPA approval by the Responsible Entity, HOME will not accept purchase agreements, lease agreements, or Disposition and Development Agreements executed if a project does not already have its Authority to Use Grant Funds or other required form of NEPA Approval. Absent NEPA Approval, acceptable forms of site control will be limited to an "option to purchase" or "option to lease" agreement, or an agreement with a public agency for the exclusive right to negotiate for acquisition of the site provided that the major terms of the acquisition have been agreed to by both parties. In addition, as noted above, all site control documents must contain the HUD required language stating that the agreement is conditioned on the Responsible Entity's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review, <u>even if this means that the document must be amended to include this required language</u>. The amount paid for the option must also be nominal.

For all new construction projects and some rehabilitation projects, compliance with NEPA is evidenced by an executed Authority to Use Grant Funds (AUGF). The AUGF is issued by HUD for CHDO projects, and by the Department 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. See Chapter V of the HOME Contract Management Manual for a thorough explanation of the NEPA process.

The Department is required by HUD to review Environmental Assessments <u>for both State Recipient and CHDO projects</u>. It can take up to nine (9) months to prepare an NEPA Environmental Assessment, and receive HCD approval. Therefore, project applicants wishing to close their construction loans in the Fall of 2010 must begin preparation of their Environmental Assessment no later than December 2009. For rental projects, please make sure that the person preparing the Environmental Assessment has a copy of the HOME Project Report, as the report 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 project or program.

## 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. Some projects, regardless of the number of units they have, are also subject to state prevailing wages.

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 carefully to make sure that prevailing wage costs have been factored in (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 the existing staff to enforce federal labor standards, then it is HIGHLY recommended that an outside labor consultant be hired.

In homebuyer self-help projects with 12 or more HOME-assisted units, Davis-Bacon wages may not be triggered 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 done, 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”. See the HOME Contract Management manual at http://www.hcd.ca.gov/fa/home/manual/07/D01_Relocation_Chapter_Text.doc for a discussion of relocation Notice requirements, and what constitutes the “initiation of negotiations.” The determination of the Initiation of Negotiation requires a case by case analysis. The Department highly recommends consultation with HOME staff to determine the specific date for Initiation of Negotiations. This recommendation applies to all rental and first-time homebuyer 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 "General Information Notice" to all tenants by the date of the "initiation of negotiations.

The Sources and Uses submitted with the application must adequately budget for relocation costs. Contact your HOME Representative for guidance in estimating relocation costs. Consistent with federal relocation requirements prohibiting economic displacement, if rents for existing tenants will increase, you must budget for a transition reserve to maintain rents for existing tenants at the levels they were prior to the rehabilitation (technically, the same rents as of "Initiation of Negotiatons").

<u>Homebuyer 90-Day Vacancy Rule</u> - Relocation requirements will also be triggered if a first-time homebuyer 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 HOME management on a case-by-case basis with adequate third-party documentation that the tenant moved for reasons unrelated to the sale of the property, i.e., the tenant is 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.

**<u>Procurement Requirements for State Recipients Using Administrative Subcontractors</u>**

Except for procurement of the NEPA consultant, which can be done 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. See the HOME Contract Management Manual at: http://www.hcd.ca.gov/fa/home/manual/04/D01_Procurement_Chapter.doc for information on this procurement process.

## XX. <u>STATE RECIPIENT RENTAL PROJECT SET-UP AND LOAN DOCUMENT REQUIREMENTS</u>

Pursuant to federal and state requirements, State Recipients may not close their construction loan, even if required to meet TCAC or CDLAC deadlines, without at least completing a limited project set-up process with the Department. Please plan to submit the set-up package at least 60 days, but preferably 90 days, prior to the desired closing deadline to allow enough time for this process.

State Recipients, using funds made available from this NOFA or from Program Income, will be the lender for rental projects, and therefore, as such, 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 on 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 ever fail, is responsible to repay the Department all HOME funds.

## XXI. STATE RECIPIENT OMB A-133 AUDIT DOCUMENTATION

Local governments that expend $500,000 or more in federal funds during the fiscal year are required to submit an OMB A-133 Single Audit Report package to the Federal Clearinghouse and to the California State Controller's Office. The 2007-08 audit package was due by March 31, 2009.

The Department will make its determination on the status of A-133 Audit compliance as of August 14, 2009 by consultation with the California State Controller's Office (SCO) and individual State Recipients. Questions regarding whether a jurisdiction is in compliance with the submittal requirements of OMB A-133 can be directed to Thomas Brandeberry, Program Activities Manager, at tbrandeberry@hcd.ca.gov, or Ferol Kimble, State Recipient Projects Manager at fkimble@hcd.ca.gov. The Department will only answer questions about whether you are in compliance. Other more technical questions must be directed to SCO.

## XXII. APPLICATION EVALUATION

### A. Rating and Ranking

The Department will rate, rank and fund applications based on its review of all eligible activities for which funds are requested in an application. The application must be submitted using the form provided by the Department. The form must contain all information requested that is required pursuant to Section 8211(c), (d), and (e).

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

If at the time the HOME rating and ranking process is underway an application has been submitted for the same project for any other Department financing source and is being evaluated by that program, HOME will count that financing as committed for rating purposes. Please consult with other Department programs regarding when they will count HOME financing as committed.

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. Once the set-asides have been achieved, all remaining applications will be funded within their respective allocations pursuant to 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 poverty level will be funded first. Final funding decisions will be made by the Division of Financial Assistance Deputy Director. The decision of the Deputy Director is final. However, for rental projects, all funding decisions are subject to approval by the Department's Loan and Grant Committee and the Department 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 the Department 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). See Section XXI of the NOFA for more information;

8. The applicant and any member of its program or project team is not on the list of debarred Contractors 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 the Department has not been altered or modified except to accommodate computer software; and

11. CHDO applications must contain procedures for ensuring effective project control pursuant to 24 CR 92.300(a) (1).CHDO rental project applicants must submit the Partnership Agreement, including the Development Agreement for the proposed project, with their HOME application.

In addition, project applications must demonstrate:

1. That the project is financially feasible. Pursuant to Section 8212(a) (6) of the state HOME regulations, the Department must determine that 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), elevation above a flood plain, and relocation. Applicants proposing projects on sites that were formerly orchards and/or vineyards may be required to submit to the Department an analysis of soil testing for pesticides remaining in the soil. It is recommended that this testing be performed prior to submitting the HOME application so that the applicant can determine whether any pesticide remediation is required and include the cost for such remediation in the development budget.

   a) For applications proposing rental projects, an application's threshold feasibility will include, but is not limited to an evaluation of:

      (i) Information adequate to determine the financial feasibility of the project in accordance with the UMR, (commencing with Section 8300), and state and federal HOME requirements;

      (ii) A market study, property appraisal, and a Phase I/Phase II Environmental Site Assessment as requested by the Department. For rental rehabilitation and /or acquisition projects, asbestos and mold assessments shall be submitted instead of Phase I/Phase II site assessments. In addition, if an application proposes rehabilitation and/or acquisition of a building constructed prior to January 1, 1978, a lead-based paint assessment shall be submitted.

   b) For applications proposing FTHB projects, an application's threshold feasibility will include, but is not limited to an evaluation of:

      (i) The ability of the project to meet federal and state HOME requirements, including an evaluation of the guidelines to be used by the applicant for administering the project in compliance with state and federal requirements.

(ii) An analysis of comparable properties in the market area, a property appraisal, and a Phase I/Phase II Environmental Site Assessment as requested by the Department. For FTHB projects not involving new construction, asbestos and mold assessments shall be submitted instead of Phase I/Phase II site assessments. In addition, if an application proposes rehabilitation and/or acquisition of a building constructed prior to January 1, 1978, a lead-based paint assessment shall be submitted.

c) Any document prepared pursuant to subsections (a) (ii) or (b) (ii) above shall be prepared by an individual or firm, which:

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

(ii) Is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible and complete report;

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

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

2. That the project has site control pursuant to Section 8303 of the Uniform Multifamily Regulations. (Note: projects must also meet HUD requirements regarding acceptable forms of site control. See Section XIX of the NOFA for more information.)

3. That there is no pending litigation that could affect implementation of the project, as proposed; and

4. For rental projects, that the project either complies with or is exempt from Article XXXIV of the California Constitution pursuant to 8212(a) (7). See Section XIV of the NOFA for more information on Article XXXIV.

C. Rental and FTHB Project Application Rating Factors:

| **Activity** | **Maximum Points Available** |
|---|---|
| Rental New Construction | 1700 |
| Rental Rehabilitation | 1700 |
| First-Time Homebuyer Projects | 1700 |

Applicants may receive up to the amounts listed, unless otherwise noted.

1. The local public entity's adopted housing element is in substantive compliance with State Housing Element Law as of August 14, 2009, the application due date, as defined at Section 8201(s) of the state HOME regulations. Newly formed cities not required to be in compliance and CHDOs shall receive full points in this category. See Management Memo 09-01 for more information; 50 points

2. Activities proposed within a jurisdiction whose formula allocation is being reallocated by the Department; and 50 points

3. Activities proposed in a rural community. 50 points

4. Capability to develop a HOME-assisted project **<u>450 points</u>**

a) 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 July 1, 2004 – June 30, 2009.

All applications will begin with 200 points. Up to 200 points may be deducted based on the following criteria.

i) Missed project deadlines of the applicant, developer, owner, and managing general partner, for deadlines occurring by the HOME application deadline of August 14, 2009.

Up to 200 points will be <u>deducted</u> as follows:

| | |
|---|---|
| Permanent Financing Commitment | (5 points) each |
| Project Set-up | (10 points) each |
| Construction Loan Closing | (10 points) each |
| Completion Deadline | (80 points) each |
| Expenditure Deadline | (20 points) each |

However, the deducted points will be restored if all of the following events have occurred by the application due date August 14, 2009:

1) the project has been completed, i.e. the Notice of Completion has been filed in the Recorder's Office
2) the Project Completion Report, showing that all HOME units are occupied, has been received by the Department, and
3) all HOME funds were expended by the original expenditure deadline in the Standard Agreement.

Pursuant to Section 8217, Applicants who disencumbered a project contract between July 1, 2004 – June 30, 2009 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 (HOME Regulation 8217(b) (3))

Certain applicants that have not received a waiver of the holdout penalty pursuant to 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 that the project has been completed, occupancy obtained, all funds have been expended, and all necessary HOME funds have been drawn pursuant to 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).

Late reports of the applicant – applies to HOME project contracts (rental and FTHB) which were awarded between July 1, 2004 – June 30, 2009, except where noted.

Up to 50 points may be deducted for late or missing reports. In assigning these points, the Department will review the applicant's history of submitting quarterly and monthly reports, program income reports, and Project Completion reports (for contracts numbered 04-HOME through 08-HOME), and Annual Performance reports (for FY 04-05, 05-06, 06-07, 07-08, and 08-09.)

ii) Material Misrepresentation of Facts- applicants, developers, owners, and managing general partners who, between July 1, 2004 – June 30, 2009, have made a material misrepresentation of any requirement or fact in an application, project report or other document submitted to the Department including but not limited to that which jeopardizes the Department's investment in a project or places the Department at risk of a monitoring finding, will lose up to 200 points.

iii) Noncompliance with Monitoring Requirements identified in the last five years (i.e. July 1, 2004 – June 30, 2009). Applicants, owners, and managing general partners who have not complied with monitoring requirements identified by the Department in the last five years will lose up to 100 points

State Recipients

- 10 points will be deducted for each second notice sent by the Department to the State Recipient for failure to submit an Annual Monitoring Report.

- An additional 10 points will be deducted if the Annual Monitoring Report has not been received by the deadline in the second notice.

CHDOs

- 5 points will be deducted for each second notice sent by the Department to the CHDO for failure to submit the Annual Operating Budget or Annual Report for a project.

- An additional 5 points will be deducted for each of these reports that have not been received by the deadline in the second notice.

b) Prior applicant experience in the implementation of local, state or federal affordable housing or community development projects in last seven years (2002-2008). 50 points

c) Prior development team experience in developing the same type of subsidized project as proposed in the application in a manner consistent with the applicable funding source in the last five years (for projects completed between August 15, 2004 – August 14, 2009). 200 points

5. Community Need **450 points**
See Appendix H of this NOFA for Community Need point scoring by activity type**.**

6. Project Feasibility, as demonstrated by: **200 points**

**Rental Projects:**

a) Compliance with the UMR (commencing with Section 8300), and state and federal HOME requirements. 175 points

b) Provision of the greatest percentage of HOME-assisted units. 25 points

**FTHB Projects:**

a) Compliance with state and federal HOME requirements 175 points

b) Provision of the greatest percentage of HOME-assisted units. 25 points

4) Project Readiness as demonstrated by: **300 points**
a) The project development plan:

| | |
|---|---|
| Rental New Construction | 155 |
| Rental Rehabilitation | 259 |
| FTHB New Construction | 155 |
| FTHB Rehabilitation/Conversion | 270 |

b) Status of local government approvals:

| | |
|---|---|
| Rental New Construction | 125 |
| Rental Rehabilitation | 1 |
| FTHB New Construction | 125 |
| FTHB Rehabilitation/Conversion | 10 |

c) Design progress

| | |
|---|---|
| Rental New Construction | 10 |
| Rental Rehabilitation | 5 |
| FTHB New Construction | 10 |
| FTHB Rehabilitation/Conversion | 10 |

d) Financing commitments

| | |
|---|---|
| Rental New Construction | 10 |
| Rental Rehabilitation | 35 |
| FTHB New Construction | 10 |
| FTHB Rehabilitation/Conversion | 10 |

6) State Objective Bonus Points: **150 points**

Project applicants will be awarded up to 150 points for meeting one or more of the following State Objectives. Applicants may receive up to the amounts listed, unless otherwise noted.

Rental Projects Only

a) Deeper Affordability - Points will be awarded based on the percentage of all HOME units at or below the Low HOME rent level (50% AMI). At initial occupancy, 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 the rent, and the rental subsidy program regulations must require that tenant incomes at initial occupancy be no more than 50% AMI. State Objective rent levels will be restricted for the entire HOME affordability period.

50 points

b) 100 Percent Financing Committed. Points will be awarded for projects that have 100 percent of their non-state HOME permanent financing committed by August 14, 2009. All permanent financing commitment letters must be included with the HOME application and must meet HOME requirements.

100 points

c) Special Needs Populations - Points will be awarded to rental projects that are proposing to target special needs populations through the use of any of the following financing sources: HUD 202, HUD 811, HUD Supportive Housing Program, State Mental Health Services Act (MHSA), MHP funds where at least 70% of the units will be reserved for Special Needs Populations, as defined under MHP Regulation 7301.

50 points

Rental and FTHB Projects

d) Outstanding Past Performance - Points will be awarded to rental and FTHB project applicants whose development team includes an applicant or developer that has completed a, 04, 05, 06, or 07 State HOME project no later than 30 months following the date of the award letter for that project. Project completion will be evidenced by the filing of the Notice of Completion and the HOME Project Completion Report for that project. To receive points for this State Objective, the Project Completion Report must show that all HOME units were occupied at the time this report was first submitted to the Department.

50 points

e) Green Building - Points will be awarded to rental and FTHB project applicants that commit to incorporating State of California Green Building/Energy Efficiency features into the proposed project.

25 points

f) Geographic Diversity of HOME Awards - Points will be awarded at the Department's sole discretion to projects which help the Department to maintain a geographic balance of HOME project awards made pursuant to this NOFA. 50 points

g) Regional Economic Recovery Work Plans: Points will be awarded if a project is part of a Regional Economic Recovery Work Plan from one of the twelve Regional Economic Recovery regions. Evidence that a project is included in one of these Work Plans must be submitted with the HOME application. If your region has not yet developed its Work Plan, points will also be awarded if the applicant and developer certify that the project will be "shovel-ready" within two years of the application deadline, i.e. construction will begin within two years.

50 points

**Program Activity Rating Factors (**Total Points Available = 1050)

Applicants may receive up to the amounts listed, unless otherwise noted.

1. The local public entity's adopted housing element is in substantive compliance with State Housing Element Law as of August 14, 2009, the application due date, as defined at Section 8201(s) of the state HOME

regulations. Newly formed cities not required being in compliance and CHDOs shall receive full points in this category. See Management Memo 09-01 for more information;

50 points

2. Activities proposed within a jurisdiction whose formula allocation is being reallocated by the Department;

50 points

3. Activities proposed in a rural community.

50 points

4. Applicant Capability to operate a HOME program: 250 points

a) Prior performance (150 points)

All applicants will initially receive the full 150 points; points will be deducted based on the following criteria:

i. Up to 50 points will be deducted for late or missing reports. In assigning these points, the Department will review the applicant's history of submitting quarterly reports and program income reports (for contracts numbered 06-HOME through 08-HOME), and Annual Performance reports (for FY 06-07, 07-08, and 08-09.)

ii. Up to 100 points will be deducted for noncompliance with monitoring or contract requirements identified in the last five years (i.e. July 1, 2004 – June 30, 2009).

b) 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 (2002-2008). 100 points

5. Community Need **450 points**

See Appendix H of the NOFA for Community Need point scoring by activity type.

6. Program Feasibility **100 points**

a) Extent Program Guidelines reflect federal and state requirements 25 points

b) Activity-specific criterion as specified below: 75 points

- FTHB programs: number of units that have sold in the city or county over the preceding 12-month period and are affordable to lower income families, given the proposed HOME assistance.

- Owner-Occupied Rehabilitation programs: number of overcrowded households by tenure and the age of the housing stock by tenure, in the city or county as reflected in U.S. Census data.

- TBRA Programs: overpayment by renter households as reflected in U.S. Census data.

7. State Objective Bonus Points **100 Points**

Program activity applicants will be awarded up to 100 points for meeting the following State Objectives:

a) Program Capacity/Continuity - 75 points will be awarded to jurisdictions that applied for but did not receive HOME program activity funding in 2008 if the Department determines that the application was eligible, but that the application could not be funded because the score was below the funding cut-off. The jurisdiction is not required to apply for the same activity(s) in 2009 that was applied for in 2008. 75 points

b) Green Building- Points will be awarded to applicants that commit to incorporating State of California Green Building/Energy Efficiency features into their OOR and/or infill new construction program activities.
25 points

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**
**DIVISION OF FINANCIAL ASSISTANCE**
**HOME and Homeownership Section**
**HOME Investment Partnerships Program**
1800 Third Street, Suite 390-3
P. O. Box 952054
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(916) 322-0356
FAX (916) 322-2904

May 2009

To: HOME Interested Parties

From: Tom Bettencourt, Chief
HOME & Homeownership Section

Re: 2009 HOME NOFA Schedule, Advisories, and Workshop Registration

I am pleased to announce the Department's plan to issue the combined HOME NOFA (for all eligible activities) on June 1, 2009. This NOFA will be for at least $60 million. NOFA workshops will be held between June 9-25 (see below for details). Applications will be due on August 14, 2009. Awards for Program Activity applicants are expected in October 2009 with Project awards in December or January.

## Advisory Information for Project Applicants on 3 important changes to the NOFA

## 1. CHDO Certification

Attention: Existing CHDOs last certified prior to January 1, 2009

Pursuant to HUD requirements that existing CHDOs be recertified every time they are awarded HOME funds, existing CHDOs that were last certified prior to January 1, 2009 who are planning on applying for HOME funds must submit annual recertification documentation with their HOME application, due August 14, 2009. The documentation that must be submitted will be specified in an Appendix to the HOME NOFA. (Note: this certification process is different than that for new CHDOs and for existing CHDOs whose 3-year certification expires by August 14, 2009.)

Applicants for new CHDO certification are required to submit their applications for certification by June 12, 2009. CHDOs whose three-year certification expires by August 14, 2009 are required to submit their three-year recertification applications by July 10, 2009. Contact your HOME Representative with any questions.

## 2. Requests for Waivers

Per the Department's pending state regulation revision, waiver requests for both performance point and "hold-out" penalties may be considered, if the delays were clearly outside the control of all members of the development team. Please contact the appropriate HOME Project Manager (Ferol

Kimble or Moira Monahan) if you are considering such a request (fkimble@hcd.ca.gov or mmonahan@hcd.ca.gov.

## 3. Eligible conditional forms of site control

As warned last year, due to HUD NEPA requirements, the only eligible conditional form of site control is an "option to purchase" or "option to lease" agreement, or an agreement with a public agency for the exclusive right to negotiate for acquisition of the site provided that the major terms of the acquisition have been agreed to by both parties. All site control documents must contain the HUD required language stating that the option is conditioned on the Responsible Entity's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review, even if this means that the document must be amended to include this required language. The amount paid for the option must also be nominal.

Remainder of this page is intentionally blank. Please go to the next page for workshop information.