

TITLE 25.
HOUSING AND COMMUNITY DEVELOPMENT
DIVISION 1. HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER 7. DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT PROGRAMS
SUBCHAPTER 2. STATE COMMUNITY DEVELOPMENT BLOCK GRANT
PROGRAM
ARTICLE 1. GENERAL

§ 7050. General

The Federal Omnibus Budget Reconciliation Act of 1981 provides for State administration of the Federal Community Development Block Grant Non-entitlement Program. These regulations set forth the policies and procedures governing the State's management and use of these funds. In addition to these regulations, program participants must comply with Federal regulations contained in Title 24 of the Code of Federal Regulations, Part 570, Subpart I. In the event that Congress or the State Legislature add or amend any requirements concerning the use or management of these funds, grantees shall comply with such requirements upon receipt of notice from the Department of the additional requirements.

7052. Primary Objectives

The primary objectives of this program are: 1) the development and preservation of cities and counties by providing decent housing and a suitable living environment and expanding economic opportunities, principally for the targeted income group; and 2) not less than fifty-one percent (51%) of the funds made available to the Department pursuant to the program shall be utilized by the Department to make grants to eligible cities or counties for the purpose of providing or improving housing opportunities for the targeted income group or for purposes directly related to the provision or improvement of housing opportunities for the targeted income group including, but not limited to, the construction of infrastructure.

Pursuant to Section 104(a)(1) of the Housing and Community Development Act of 1974, as amended, the Department shall annually prepare a statement of community development objectives and projected uses of funds. This statement shall be made available to the public and published, and the Department shall conduct no less than two public hearings at different locations on its contents. The statement shall be available for review for at least thirty (30) days prior to the public hearings.

7054. Definitions

"Act" means Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., as amended.

"Activity" means any single eligible undertaking carried out as part of an applicant's program under the State CDBG Program.

"Applicant" means any eligible city or county that applies for funds pursuant to this subchapter as set forth in Section 7060.

"CFR" is the acronym used for the Code of Federal Regulations.

"Chief executive officer" of a unit of local government means the mayor of a city, the chairman of a county board of supervisors, or the official designated pursuant to law by the governing body of the unit of general local government who has the primary responsibility for the conduct of that unit's governmental affairs.

"Community Development Block Grant Funds," "CDBG Funds," or "Grant Funds" means any funds allocated by a grant agreement pursuant to this subchapter or previously funded to non-entitlement jurisdictions by HUD pursuant to their authority under the Act.

"Department" means the State of California Department of Housing and Community Development.

"Director" means the Director of the Department.

"Economic Development Allocation" means the funds set aside each year for economic development pursuant to Health and Safety Code Section 50827 and Section 7062.1.

["Economic Development", for the purpose of these regulations, means providing grants to non-entitlement jurisdictions to conduct CDBG eligible activities as defined in 24 CFR 570.203.](#)

"Federal regulations" means the federal regulations governing the State administration of the Community Development Block Grant non-entitlement funds set forth in the Code of Federal Regulations, Title 24, Part 570, Subchapter C, Subpart I, commencing with Section 570.480.

"Funding" means financial assistance provided in whole or in part for any eligible activity.

"Funding Cycle" means the annual period of time during which HUD makes funds available to the State for distribution to local governments pursuant to

the Act, and includes the period of time during which the Department solicits applications and makes grant awards.

“General” means all activities, other than Economic Development activities, eligible under 42 USC 5305 (The Act), 24 CFR 570.201 and 24 CFR 570.482. “General” as defined here can also refer to “Community Development”.

"Grant Agreement" means the contractual arrangement between the State and the Grantee which sets forth the terms and conditions by which State CDBG funds are utilized.

"Grantee" means a unit of general local government which has been awarded funds provided pursuant to this subchapter to carry out a program.

"Household" mean persons occupying a housing unit as the place of residence.

"Housing Element" means the part of a city or county's General Plan as required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

"HUD" means the United States Department of Housing and Urban Development.

"Infrastructure" means the physical systems such as roads, sidewalks, streetlights, water and sewer facilities which are necessary to provide basic community services.

"Lowest Targeted Income Group" means persons and households with incomes less than 50 percent of the latest HUD estimated area median family income who are intended to be beneficiaries of the State CDBG Program.

"Microenterprise" means a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

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

"Overpaying" means a household which are paying more than ~~25%~~ 30% of their gross household income for housing costs, including utilities. Data used to document overpaying includes the percentage of renters who pay more than ~~25%~~ 30% of household income for gross rent, including utilities, and the percentage of homeowners who pay more than ~~25%~~ 30% of household income for selected housing costs, including utilities, based on the latest

available U.S. Census data.

"Permanent job" means a full-time or full-time equivalent job created or retained by an activity funded under the Economic Development Allocation which is directly related to the expansion or retention of a business. To be considered "full-time" a job must provide at least 1,750 hours per year. Part-time jobs that provide at least 875 hours per year of employment may be aggregated to arrive at a full-time equivalent job of at least 1,750 hours per year.

"Poverty Persons" means individuals whose incomes are below the poverty level based on the latest available U.S. Census data.

"Program" means all of the activities funded in whole or in part included in an application which are funded under this subchapter.

"State" means the State of California.

"Targeted Income Group" or "TIG" means persons or households with low to moderate income (Low/Mod) as defined in 42 USC 5032(a)(20). "TIG" as defined here can also be referred to as "Low/Mod". ~~persons and households intended to be the principal beneficiaries of the State Community Development Block Grant program. The term targeted income group includes the component "lowest targeted income group" unless otherwise specified in this subchapter. Applicants shall use income limits provided annually by the Department in determining program benefit to the targeted income group. These income limits are based on the latest HUD estimate of area median family income with adjustments for unusually low income areas. For a family of four, the "targeted income group" limit is 80% of the latest HUD estimated or adjusted area median family income. For a family of four, the income limit for lowest targeted income group limit is 50% of the latest HUD estimated area median family income. Income limits for other household sizes are based on household size adjustment factors~~

ARTICLE 2. APPLICATION PROCESS

7056. Application and Funding Requirements ~~Funding Availability~~

- (a) Within a funding cycle, the Department may issue one or more NOFAs.
- (b) The NOFA shall specify, among other things, the maximum amounts of funds available, the activities eligible, the time frame for submittal of applications, the application requirements pursuant to Section 7070, the allocation of rating points pursuant to Section 7078, the matching contribution requirements pursuant to Section 7058(5)(ii), any prohibitions of uses of funds, the availability of administrative funds, and the general terms and conditions of funding allocations.

- (c) In order to comply with any set-aside established by HUD or the Department, or special allocation made by HUD, the Department may do one or more of the following:
- (1) Issue a special NOFA
 - (2) Specify in each NOFA the reservation of a portion of the funds; and
 - (3) Specify in each NOFA any waivers to requirements granted by HUD in connection with the funds.

~~(a) The applicant shall meet the following requirements when the application is submitted:~~

- ~~(1) The applicant shall submit all the application information required in Section 7062.1 and/or Section 7070 as applicable.~~
- ~~(2) The applicant shall have resolved any audit findings, performance problems for program income or performance problems for prior CDBG grants awarded by an urban county, by HUD under the Small Cities Program or by the State under this subchapter. The Director may waive this requirement when such problems or findings result in no obligation to return funds to the grantor, arrangements satisfactory to the grantor have been made for repayment, disencumbrance, performance, or a formal action to resolve the matter has been taken.~~

~~(b) Applicants shall meet the following requirements prior to an award of grant funds:~~

- ~~(1) As a condition of receiving funds pursuant to this subchapter, an eligible city or county shall have submitted a housing element to the Department in accordance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code. However, except as otherwise provided in Section 50830 of the Health and Safety Code, no application for funds shall be denied because of the content of the housing element or because of the findings made by the Department pursuant to Section 65585 of the Government Code.~~
- ~~(2) (A) Except as otherwise provided in subparagraphs (B) and (C), no city or county shall be eligible to receive funds pursuant to this Subchapter if the city or county has adopted a general plan, ordinance, or other measure which directly limits, by number, either of the following:~~

- ~~1. The building permits that may be issued for residential construction.~~
- ~~2. The buildable lots which may be developed for residential purposes.~~

~~(B) Subparagraph (A) shall not apply to either of the following:~~

- ~~1. An ordinance adopted by a city or county which does any of the following:
 - ~~a. Imposes a moratorium, to protect the public health and safety, on residential construction for a specified period of time, if, under the terms of the ordinance, the moratorium will cease when the public health or safety is no longer jeopardized by the construction.~~
 - ~~b. Creates agricultural preserves pursuant to Chapter 7 (commencing with Section 51200) of Part 2 of Division 1 of Title 5 of the Government Code.~~
 - ~~c. Was adopted pursuant to a specific requirement of a state or multi-state board, agency, department, or commission.~~~~
- ~~2. A city or county which has a housing element that the department has found to be adequate pursuant to subdivision (c) of Section 65585 of the Government Code or which is deemed to be in compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code pursuant to Section 65586 of the Government Code at the time the city or county applies for funds under the program, unless a final order has been issued by a court in which the court determined that the housing element is not in compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.~~

~~(C) A city or county which has adopted a general plan, ordinance, or other measure subject to the restrictions of subparagraph (A), which are not exempted by subdivision (B), may, notwithstanding subparagraph (A), receive funds pursuant to this subchapter if the use of the funds is restricted for housing for the targeted income group. However, applications from cities or counties which have not adopted a general plan, ordinance, or other measure subject to the restrictions of subparagraph (A) shall, to the extent that eligible applications for grants exceed the amount available for distribution pursuant to this Subchapter have priority over applications from cities or counties which have adopted such a general plan,~~

~~ordinance, or other measure which are not exempted by subdivision (B).~~

- ~~(3) At least fifty one percent (51%) of the funds applied for shall benefit the targeted income group. No activity or portion of a program assisted by these funds may exclude from its benefits the lowest targeted income group. Individual activities shall meet one of the three national objectives which are: (1) the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income; (2) aiding in the prevention or elimination of slums or blight; or (3) meeting other community development needs having a particular urgency. For the purposes of this section, "slums" and "blight" means a blighted area or structure characterized by one or more of the following conditions: (1) the buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, which are unfit to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of factors listed in Health and Safety Code Section 33031; and (2) properties which suffer from economic dislocation, deterioration, or disuse because of factors listed in Health and Safety Code, Section 33032. For the purposes of this section, an activity will be considered to address the standard of urgency if the applicant certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the applicant is unable to finance the activity on its own, and that other sources of funding are not available to meet such needs. For the purposes of this section, any condition which has existed longer than eighteen (18) months prior to the final filing date for applications shall not be considered to meet the standard of urgency.~~
- ~~(4) The single-year program described in the application must be scheduled for completion within twenty-four (24) months from the date the grant agreement is executed by the State. The multi-year, two or three year program described in the application must be scheduled for completion within 36 or 48 months, respectively. The Department may waive this provision in writing if it determines that the program, by its nature, cannot be completed within the 24, 36, or 48 month period, or that conditions beyond the grantee's or State's control hinder program completion.~~
- ~~(5) (A) If CDBG grant funds or local program income will be used to operate a program (i.e., activities serving multiple separate projects, not persons), the applicant shall submit program~~

~~guidelines to the Department for approval. No CDBG grant funds or local program income shall be expended to operate a program until the Department has approved the program guidelines in writing.~~

~~(B) The program guidelines shall describe how the program will be operated and how it will comply with State and federal regulations. In addition, program guidelines shall address the following topics:~~

- ~~1. Loan terms and interest rates;~~
- ~~2. Loan underwriting standards;~~
- ~~3. Loan application processing procedures and timing for loan approvals;~~
- ~~4. Procedures for resolving disputes between the participant and the CDBG grantee;~~
- ~~5. Description of any property restrictions imposed as a condition of receiving the loan (e.g., resale controls, equity sharing);~~
- ~~6. Loan servicing policies addressing the issues of: subordination; refinancing; change in occupancy, change in use, assumptions, and verification of payment of taxes and insurance.~~
- ~~7. If the program will involve rehabilitation or construction, procedures for developing the scope of work, description of the contractor procurement and payment process, and a description of the conflict resolution process in the event of a dispute between the contractor and the program participant.~~

7058. Eligible Activities

(a) Eligible Activities: Activities eligible for funding are those described in 42 USC s5305 and pursuant to 24 C.F.R. 570.201-203, 24 C.F.R. 205, and 24 C.F.R. 207- 208, including:

- (1) Housing Assistance – Single Family Residence (1-4 units) or Multi-Family Housing (5 or more units) – Acquisition, Rehabilitation, New Construction;
- (2) Public Facilities – Acquisition, Rehabilitation, Construction;
- (3) Infrastructure and Infrastructure in Support of Housing;

- (4) Public Services – Certain costs associated with providing services including but not limited to Child Care, Health Care, and Job Training.
 - (5) Planning and Technical Assistance – Costs associated with completing a planning study.
 - (6) Economic Development including Business Assistance and Micro Enterprise Assistance.
- (b) Each activity must meet all benefit requirements of 24 CFR 570.483 and 24 CFR 570.484 by the end of the contract term.
- (1) At least fifty-one percent (51%) of the funds awarded shall benefit the targeted income group. No activity or portion of a program assisted by these funds may exclude from its benefits the lowest targeted income group. Individual activities shall meet one of the following three national objectives: (1) the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income; (2) aiding in the prevention or elimination of slums or blight; or (3) meeting other community development needs having a particular urgency.
 - (A) For the purposes of this section, "slums" and "blight" means a blighted area or structure characterized by one or more of the following conditions: (1) the buildings and structures, used or intended to be used for living, commercial, industrial, or other purposes, which are unfit to occupy for such purposes and are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime because of factors listed in Health and Safety Code Section 33031; and (2) properties which suffer from economic dislocation, deterioration, or disuse because of factors listed in Health and Safety Code, Section 33032.
 - (B) For the purposes of this section, an activity will be considered to address the standard of urgency if the applicant certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the applicant is unable to finance the activity on its own, and that other sources of funding are not available to meet such needs. For the purposes of this section, any

condition which has existed longer than eighteen (18) months prior to the final filing date for applications shall not be considered to meet the standard of urgency.

(c) Each Economic Development activity must meet all benefit requirements listed in Section 7062.1(a)(1) and (2).

7060. Eligible Applicants

~~Any city or county is eligible to apply for the State CDBG Program except a city or county which participates in or is eligible to participate in the HUD administered Community Development Block Grant Entitlement Program. The following restrictions shall apply to all applicants under the State Program.~~

~~(a) Except as provided in Sections 7062 and 7062.1, an applicant may submit only one application each funding cycle for activities in its jurisdiction. A grantee receiving a grant award for up to three annual funding awards pursuant to Section 7064(c) that does not undertake the portion of its program funded from the second or third funding award may submit a new application, provided the multi-year award has been terminated under the terms of the grant agreement. A grantee that has received a multiple year award for up to three years, where any of the annual awards is less than \$500,000, may submit an application under the second and/or third year for additional awards, which when combined with their existing annual funding awards, do not exceed \$500,000 per year.~~

(a) The applicant shall have met the following requirements when the application is submitted:

~~(1) Any city or county is eligible to apply for the State CDBG Program except a city or county which participates in or is eligible to participate in the HUD administered Community Development Block Grant Entitlement Program. The following restrictions shall apply to all applicants under the State Program.~~

(2) The applicant shall submit all the application information required in Section 7062.1 and Section 7070 as applicable.

(3) Beginning with the 2013 NOFA, an applicant with one or more current CDBG grant agreements signed in 2012 or later, for which the expenditure deadline established in the grant agreement(s) has not yet passed, shall be ineligible to apply for

any additional CDBG funds unless the applicant has expended at least fifty percent (50%) of CDBG funds awarded in 2012 and later. The requirements of this subsection do not apply to Economic Development Over-the-Counter Funds.

(4) The applicant must demonstrate to the satisfaction of the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report.

(5) The applicant must have complied with all the Housing Element requirements listed in Health and Safety Code Section 50830.

(b) Applications may be submitted by individual eligible applicants or by groups of eligible applicants in any one of the following forms. Except as provided in paragraphs ~~(5) and (6)~~ Subsection (c) below, no eligible applicant may be included in more than one application that provides direct program benefits to that political subdivision. Applications for eligible activities outside the applicant's jurisdiction must include a joint powers agreement with the city or county in which the eligible activity is located.

(1) An eligible applicant may apply on its own behalf.

(2) An eligible applicant may apply on its own behalf and in the same application on behalf of one or more other eligible applicants.

~~(3) An eligible applicant may apply on behalf of one or more other eligible applicants in the same application or may apply on behalf of one or more other eligible applicants in separate applications.~~

~~(4)~~ (3) Two or more eligible applicants which share a program may submit a joint application.

~~(5) In addition to an the activity and application limits identified in the NOFA submitted under Section 7060(a), an eligible applicant may apply separately for activities in target areas within or outside of the applicant's jurisdiction when there are concentrations of Native Americans Indians as described in Section 7062 provided the concentration is within an eligible city or county. Applications for target areas outside the applicant's jurisdiction must include a joint powers agreement with the city or county in which the target area is located.~~

~~(6) In addition to an application submitted under Section 7060(a) or Section 7060(b)(5), an eligible applicant may apply separately for activities under Section 7062.1.~~

- ~~(c) Cooperation agreements. Executed joint powers agreements, consistent with the requirements of Section 6500 et seq. of the Government Code must be submitted with joint applications and applications on behalf of another unit or units of local government. These agreements must be on a form provided by the Department.~~
- (c) In addition to General and ED activity and application limits identified in the NOFA, an eligible applicant may apply for activities in target areas within or outside of the applicant's jurisdiction when there are concentrations of Native Americans as described in Section 7062 provided the concentration is within an eligible city or county.

7062. Special Allocation for Native American Indian Communities

Pursuant to the requirements of 24 CFR, Part 1, the Department finds that there are within the State of California, communities principally comprised of low-income Native Americans ~~s Indians~~ not recognized as Indian Tribes as defined in Section 102(a)(17) of the Act (the Act defines Indian Tribes as any Indian tribe, band, group, and nation . . . of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638), or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512)). The Department also finds that these communities have, in previous years, received the benefits of the Act primarily through the Department's successful submittal of applications on their behalf. The Department further finds that its inability to continue to apply on behalf of this minority population, caused by the legal constraints of the 1981 amendments to the Act, and the legal ineligibility of these groups to apply on their own behalf for federally- or State-administered CDBG funds, will have the effect of depriving this minority group from participating in the State CDBG Program unless there are some affirmative measures to ensure its participation.

- (a) Pursuant to the requirements and authority of 24 CFR 1.4(c)(6)(ii) and by the direction of the State Legislature, the Department shall set aside an amount equal to one and one quarter percent (1.25%) of the total State CDBG funds to be granted to eligible applicants for identifiable geographic areas within eligible cities and counties comprised of high concentrations of Native Americans ~~s Indians~~ not recognized as Indian Tribes as defined in Section 102(a)(17) of the Act. For the purpose of this section, identifiable geographic areas comprised of high concentrations of Native Americans ~~s Indians~~ means identifiable geographic areas comprised of no less than fifty one percent (51%) Native Americans ~~s Indians~~ not recognized as an Indian Tribe by the Act.

An identifiable geographic area may be defined by locally accepted social, historical, physical, political, or past programmatic boundaries.

- (b) An application for this set aside may be in addition to another application submitted by an eligible city or county pursuant to Section 7060(b)(1)-(5). Applications submitted under this section will be independently evaluated and ranked against other applications for this special allocation without regard to the rating of an application submitted pursuant to another section of this subchapter.
- (c) An application submitted pursuant to this section shall be in the form prescribed for applications in Section 7070 and shall comply in all other respects with this subchapter. CDBG funds utilized within the identifiable geographic areas must principally benefit residents in the targeted income groups without regard to race, religion, national origin, or sex. In the event all the set aside funds are not awarded in a funding cycle, the Department shall award the remaining funds to the highest ranked unfunded applications submitted under Section 7072.

7062.1. Special Allocation for Economic Development

- (a) The Department shall set aside from the total amount available from HUD, for grants to cities and counties an amount equal to thirty percent (30%) for the activities specified in this section. Applications submitted under this section must comply with all the requirements of this subchapter except where noted in this section. Economic Development Allocation funds shall be awarded through the NOFA process for eligible activities listed in Section 7058 and 7062.1)(a)(1). ~~three components: the California Community Economic Enterprise Fund ("Enterprise Fund") set forth in subsection (b); the Over-the-Counter Component ("OTC Component") set forth in subsection (c); and the Planning and Technical Assistance Component ("Planning Component") set forth in subsection (d).~~
 - (1) Activities eligible for funding under the Economic Development Allocation are those activities which are subject to the Standards for Evaluating Public Benefits set forth in subsection (f) of 24 CFR Section 570.482 ~~as well as activities which assist microenterprises.~~ Eligible activities shall also meet a national objective as specified in Section 104(b)(3) of the Act (42 U.S.C. Sec. 5304(b)(3)) and 24 CFR Section 570.483. The Department shall utilize Section 105(a) of the Act (42 U.S.C. Sec. 5305(a)), 24 CFR Section 570.482, and Subpart C of Part 570 of the federal CDBG regulations commencing with Section 570.200, for guidance in determining the eligibility of activities proposed under this section. Where CDBG funds are used for public improvements (e.g., water, sewer or road improvements) the national objective shall be met pursuant to 24 CFR Section 570.483.

- (2) In order to be eligible for funding from the Enterprise Fund as set forth in subsection (b) or the ED OTC Component as set forth in subsection (c), with the exception of assistance to microenterprises, a project or activity (hereinafter collectively referred to as an "activity") shall be capable of generating sufficient public benefit relative to the amount of CDBG assistance provided as required by the Act. The Department, with respect to activities-funded from the ED OTC Component, and Grantees with respect to activities funded with Enterprise Funds, shall utilize the federal standards specified at 24 CFR Section 570.484(f) to determine whether sufficient public benefit will be generated by a proposed activity.
- (3) Prior to the funding of any activity from either the Enterprise Fund or the ED OTC Component, the activity shall be underwritten to ~~insure~~ ensure that:
- (i) the activity's costs are reasonable;
 - (ii) that all sources of activity financing are committed;
 - (iii) that to the extent practicable, CDBG funds are not substituted for non-Federal financial support;
 - (iv) that the activity is financially feasible;
 - (v) that to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
 - (vi) that to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the activity. Activities shall be underwritten by the Department, with respect to activities funded from the ED OTC Component, and by Grantees with respect to activities funded with Enterprise Funds, utilizing the federal Guidelines and Objectives for Evaluating Project Costs and Financial Requirements set forth as Appendix A to 24 CFR Part 570.
- (4) An activity funded from the Enterprise Fund or the ED OTC Component shall be reevaluated by the Department or grantee pursuant to subsections (a)(2) and (a)(3) of this Section if the underlying assumptions relied upon by the Department or the Enterprise Fund grant recipient in making its original funding decision materially change. A "material change", for these purposes, means: (1) a change in the size, scope, location or public benefit of the activity; or (2) a change in the terms or the amount of the private funds (including lender's funds and equity capital) to be invested in the activity; or (3) a change in the terms or the amount of the CDBG assistance to be made available to the activity. If a material change has occurred and a reevaluation of the activity indicates that the financial elements and public benefit to be derived have also changed, then appropriate adjustments in the amount, the type of CDBG assistance and/or the terms and

conditions under which that assistance has been offered shall be made to reflect the impact of the material change.

- (5) In the event that an activity funded under the Enterprise Fund or ED OTC Component fails to meet a federal national objective or state or federal eligibility requirement, at the Department's discretion, a Grantee may be required to repay all or a portion of the grant amount from a non-federal source of revenue, and/or may be required to return all or part of any program income received from the CDBG-assisted activity to the Department. In determining the appropriate remedy, the Department shall, at a minimum, consider the following factors:
 - (1) actions taken by the Grantee to avoid the adverse circumstances in the first place;
 - (2) actions taken by the Grantee to mitigate the circumstances once the problem was discovered; and
 - (3) timeliness of steps taken to protect and/or recover CDBG funds. Failure by a Grantee to comply with any requirements or written instructions issued by the Department pursuant to this subsection shall be considered a failure by the Grantee to resolve any "audit findings or performance problems" ~~as that phrase is used in Section 7056(a)(2).~~ and point deductions may be applied to subsequent applications at the time those applications are scored.
- ~~(6) Funding maximums from the Economic Development Allocation and the Planning Component shall be as set forth in Health and Safety Code Section 50832 subdivision (a) and Section 50833 subdivisions (a) and (b). The Department may waive the eight hundred thousand dollar (\$800,000) and five hundred thousand dollar (\$500,000) limitations for the Economic Development Allocation after September 1 of each year.~~
- (6) Pursuant to Health and Safety Code 50831(c) all funds awarded to the Department from HUD, must be awarded within the Funding Cycle. If not awarded by the end of the Funding Cycle, the funds shall no longer be available for Economic Development activities. The Department may allocate funds between the Enterprise funds and OTC as set forth in the NOFA. The NOFA will announce open and close dates for the ED OTC. These dates will be in compliance with encumbrance regulations at CFR 570.494 and Health & Safety Code Section 50834(c).

- (7) All Economic Development Allocation funds returned, disencumbered or paid to the State in the form of program income ("returned funds") shall be made available to fund current-year applications to the Enterprise Fund or the **ED** OTC Component. ~~On May 1 of each year, if there are any unawarded Enterprise Funds or OTC Component funds, including returned funds, the Department may reallocate funds between the components based on relative demand, notwithstanding the provisions in subsection (b) of this Section. On June 1 of each year, unawarded funds remaining in the Enterprise Fund, the OTC Component, or the Planning Component, including returned funds, shall be made available to fund unfunded applications submitted pursuant to Section 7072.~~
- (8) Grants to eligible local governments may be passed through to qualified organizations chartered to perform economic development activities.
- (9) Notwithstanding any other provision of this Section, the Director may alter the order applications are reviewed for applicants requesting funds for an urgent need such as an imminent plant closure, an emergency recognized by the State. The Director's decision to alter the order an application is reviewed shall be in writing and made part of the application file.
- (b) Enterprise Fund. Economic Development Allocation funds set aside for use pursuant to this subsection shall be known as the ~~California Community Economic~~ Enterprise Fund (Enterprise Fund). The purpose of the Enterprise Fund is to provide a source of funds to establish or enhance local revolving loan fund programs. ~~For the 1995 program year only, not more than fifty percent (50%) of the Economic Development Allocation funds shall be allocated to the Enterprise Fund. For all subsequent program years, not more than seventy percent (70%) of all Economic Development Allocation funds shall be allocated to the Enterprise Fund.~~
- ~~(1) At least seventy (70) days prior to the due date for applications, the Department shall notify all eligible cities and counties of the anticipated level of funding for the Enterprise Fund through a Notice of Funding Availability (NOFA) and the deadline for receipt of applications. The Department shall also make available application forms and a training manual which will provide eligible applicants with a consistent format for presenting proposals, information on proposal review factors, and guidance on program policies that may affect an applicant's program design.~~
- (1) Two activities are eligible under the Enterprise Fund. The first is Business Assistance activities under HUD's Special Economic**

Development Activities under section (105(a)(17), (105(a)(14) and, (105(a)(17) of the Housing and Community Development Act of 1947. The second is Micro Enterprise Assistance activities under section (105(a)(22). All Business assistance activities must meet the HUD public benefit standard of job creation or retention under the Statutes covering Special Economic Development Activities referenced above. Business Assistance program activities must also meet the HUD national objective of benefit to TIG persons by mandating 51% of jobs created under public benefit standard be made available to low income persons. No public benefit requirement will apply to Micro Enterprise Assistance program activities. All Micro Enterprise Assistance programs must meet the HUD definition of micro enterprise size (five or fewer employees) and also meet the national objective of benefit to low income beneficiaries by restricting the program to low income micro business owners.

- ~~(2) The maximum Enterprise Fund grant award to a single applicant in a program year shall not exceed \$500,000, except as specified at 7062.1(a)(6). The Director may establish a lower maximum award through each year's NOFA. A decision to reduce the maximum award shall be based upon the relative demand for Enterprise Fund grants and OTC Component funds during the previous year and the total Economic Development Allocation funds available.~~
- ~~(3) Activities which are eligible for funding from a local revolving loan fund include, but are not limited to: construction loans; new equipment purchase loans; working capital loans; land acquisition loans; loan guarantees; loans for privately owned on-site improvements; grants for public off-site sewer, water and road improvements; and assistance to microenterprises.~~
- ~~(4) (2) Except for assistance to micro enterprises, the cost-per-job created or retained for a grantee's aggregate activities proposed for funding from the Enterprise Fund shall not exceed \$35,000 in CDBG funds, or \$50,000 in CDBG funds per job created or retained for each activity. Any activity funded under this component shall meet the standards for public benefit set forth in subsection (f) of 24 CFR Section 570.482.~~
- ~~(5) Allocation Review Procedures and Evaluation Criteria.~~
 - ~~(A) Each eligible applicant shall submit an original and two (2) copies of its application to the Department by the application deadline specified in the NOFA. Applications submitted by mail shall be received no later than the deadline. Applications delivered to the Department must be date stamped by the Department prior to 5 P.M. on the due date.~~

- ~~(B) In order to be considered complete, an application shall contain the information requested in the NOFA and such other information as necessary for the Department to evaluate the application using the points and rating factors set forth in subsection (b)(5)(D) of this Section. If an application contains a description or analysis which includes quantified information, the source of the information, and the method of computation shall be described. If the Department determines that the method of computation leads to conclusions which are inaccurate or misleading, it may, after consultation with the applicant, adjust the method of computation or the conclusions during the evaluation process.~~
- ~~(C) Within thirty (30) days of receipt of an incomplete application, the Department shall return the application to the applicant with a written explanation of the reasons why the application is incomplete.~~
- ~~(D) The Department shall evaluate, rate and rank each complete application utilizing the following evaluation criteria and assigned points:~~

<u>Evaluation Criterion</u>	
Need for Program:	30 Total Points
Relative Poverty Index	15 Points
Relative Unemployment Rate	10 points
Adverse Economic Event	5 Points
Local Program Capacity:	50 Total Points
Performance on Past CDBG ED Grants	20 points
Relative Strength of Basic Program Design	10 Points
Relative Experience of Program Operators	10 Points
Other Local Organizational Support	10 Points
Program Effectiveness:	20 Points
Commitment of Other (non-state, non-federal)	
Funding Sources	10 Points
Extent to Which Program Complements Local or Regional Economic Development Plan	10 points
Maximum Total Points	100 Points

- ~~(E) For purposes of this subsection (b)(5), the foregoing terms shall be defined or applied as follows:~~
- ~~1. "adverse economic event" shall mean an event of recent origin which has the effect of significantly reducing employment opportunities for the labor force within the applicant's jurisdiction.~~
 - ~~2. "unemployment rate" shall mean the unemployment rate for the city or county applicant as measured by the applicant county's unemployment rate as published in~~

~~the most recently available State Employment Development Department's "Monthly Labor Force For Counties".~~

- ~~3. factors which shall be considered in assessing an applicant's performance on past CDBG grants shall include: Achievement of job creation or job retention objectives specified in the grant agreement; leveraging of other funds as specified in the grant agreement; and, timely expenditure of CDBG funds.~~
 - ~~4. "basic program design" shall be evaluated as follows: The extent to which the applicant's program guidelines are consistent with CDBG program requirements and reflect prudent lending practices and procedures.~~
 - ~~5. "other local organizational support" shall mean: The documented intent of local economic development organizations, such as local economic development corporations, Economic Development Districts, or Small Business Development Corporations, to commit resources towards implementation of the Enterprise Fund program.~~
- ~~(F) The Department shall complete the ranking of applications within eighty (80) days from the application deadline. Applicants shall be notified in writing of point scores, fund reservations and any adjustments necessary to comply with national objective or eligibility requirements. The Department may condition its award of funds in order to achieve the purposes of this subchapter and to ensure compliance with applicable State and federal requirements.~~
- ~~(G) Successful applicants shall receive a reservation of Enterprise Funds equal to the approved grant amount. These reserved funds shall be held by the Department pending drawdown requests for specific eligible activities.~~
- ~~(H) Successful applicants shall be subject to the requirements of Section 7076(d) in ensuring timely execution of the grant agreement and in the timing for incurring costs under the grant agreement.~~
- ~~(6) The assessment of a specific proposed activity's eligibility for funding for activities of \$50,000 or less shall be performed by Grantee and reviewed by the Department as part of the grant monitoring process. The assessment of eligibility for specific activities over \$50,000 shall~~

~~be performed by the Department and shall occur prior to approval of the initial drawdown request for that activity.~~

- ~~(7) A Grantee's unused Enterprise Fund grant funds shall be disencumbered twenty four months after grant agreement execution. The Department may waive this provision in writing if it determines that compelling circumstances warrant the waiver. For purposes of this subsection only, for activities of \$50,000 or less, funds shall be considered "unused" if not approved by the local loan committee for disbursement as a loan to a specified borrower; for activities over \$50,000, funds shall be considered unused if the Department has not yet received complete documentation, as determined by the Department, of the proposed borrower's eligibility.~~
- ~~(8) Upon receipt of an application and based on availability of funds, the Director may allocate a portion of the Enterprise Funds to assist eligible jurisdictions directly affected by announced military base closures or reductions. Enterprise Funds shall be made available pursuant to this subdivision (b)(8) only if the Enterprise Funds will be used to obtain federal funds for capitalizing local revolving loan funds which will be used to mitigate the economic displacement caused by such base closures or reductions.~~

- (c) Over-the-Counter Component. Economic Development Allocation funds not allocated to either the Enterprise Fund or the Planning Component shall be made available for award pursuant to this subsection (c), which shall be known as the "**Economic Development** Over-the-Counter-Component" or "**ED** OTC Component". Through the **ED** OTC Component, the Department shall provide grants to eligible cities and counties to: make loans to employers for an identified CDBG-eligible activity, provided the loan will result in the creation or retention of permanent jobs; or to construct infrastructure improvements which are necessary to accommodate the creation, expansion or retention of a business that will create or retain jobs.

- ~~(1) Through a notice of funding availability ("NOFA"), each program year the Department shall notify all eligible cities and counties of the anticipated level of funding for the OTC Component. OTC Component applications shall be accepted on a continuous basis.~~
- ~~(2) Awards from the OTC Component to a single city or county in a single program year shall not exceed \$500,000, regardless of the number of applications, except as specified in subsection 7062.1(a)(6).~~
- ~~(3) Notwithstanding Section 7064(c), two or more applicants may submit a joint application for an OTC Component award. The maximum award for a joint application shall be five hundred thousand dollars (\$500,000) per participating applicant per program year.~~

- (1) All applications will be accepted on a first-come, first-served basis. The Department will use the tiebreaker process as determined in the HUD Annual Plan pursuant to the procedures set forth under Section 7078 if more applications than can be funded are received by the Department on the same day.
- (2) All application evaluation criteria are subject to Sections 7070, 7076 and 7078.
- ~~(4)~~ (3) In order to be considered complete, an application shall contain the information requested in the NOFA, and such other information as necessary for the Department to evaluate the application using the points and rating factors set forth in subsection (c)(~~7~~)(4) of this section and the following information as appropriate:
 - (A) If an applicant contains a description or analysis which includes quantified information, the source of the information, and the method of computation shall be described. If the Department determines that the method of computation leads to conclusions which are inaccurate or misleading, it may, after consultation with the applicant, adjust the method of computation or the conclusions during the evaluation process.
 - (B) Evidence that activities proposed for funding meet one of the national objectives specified under Section 7056(b)(3) and detailed under 24 CFR Section 570.483.
 - (C) If an application asserts that an activity will meet the national objective of principally benefiting the TIG, the application shall include a description of the means of verification which the applicant will use to determine the number and income of those households actually benefiting from the program.
 - (D) A schedule demonstrating that any new jobs that will be generated by the program will be available within 24 months of execution of the grant agreement by the Department.
 - (E) For off-site public improvement activities, the application shall document the following: how the activity meets the national objective and public benefit requirements specified in 24 CFR Section 570.482(f); that the applicant has negotiated with the businesses and other beneficiaries that will be served by these improvements and obtained an appropriate funding contribution towards the cost of the improvements; and how the activity meets the requirements of paragraphs (2) and (3) of subsection (a) of this Section.

~~(5) The Department shall review applications based on order of receipt. Within thirty (30) days of receipt of an incomplete application, the Department shall notify the applicant in writing of the reasons why the application is incomplete.~~

~~(6) Within 60 days of the date an application is determined to be complete, the Department shall review the application for compliance with state and federal program requirements and provide the applicant, in writing, the Department's decision to approve or deny funding for the application. Applications eligible for funding shall be funded in order of receipt of a complete application.~~

- (7) (4) In making funding decisions, the Department shall first evaluate the application using the following factors and points as threshold criteria. To pass threshold, an application must score at least 50 points.

Factor Points

- (A) Percent of county-wide unemployment relative to the Statewide average (A maximum of twenty-five points).
- (B) Ratio of CDBG funds per job - maximum ratio of \$35,000 per job created or retained (A maximum of fifteen points).
- (C) Ratio of private funds to CDBG funds (A maximum of fifteen points).
- (D) Quality of applicant's past performance for CDBG economic development contracts (A maximum of fifteen points).
- (E) Percent of funds allocated to applicant's general administrative costs (for this purpose, general administrative costs do not include funds budgeted for planning studies) (A maximum of ten points).

- (8) (5) Applications which have received 50 or more points shall be reviewed for funding using the following factors:

- (A) the extent of the applicant's need for CDBG funds,
- (B) the market feasibility of the proposed activities,
- (C) the feasibility of the proposed activities under local and other regulatory requirements,

- (D) the financial feasibility of the proposed activities. In analyzing this factor, the Department may determine that an activity is feasible even though other funding sources have not committed their funding to an activity. If the application documents the terms and conditions that will be offered by the other funding sources, then the Department may conditionally commit to funding. This commitment of funding by the Department shall be conditioned upon the final commitment from the other funding sources,
 - (E) the capacity of the applicant and its borrower, subcontractors or subgrantees to manage the proposed activities,
 - (F) the appropriateness of the terms proposed by the applicant, given the documented needs of the business and given the amount of public benefit in the form of job creation or job retention that will result from the CDBG-assisted activity,
 - (G) the status of the ownership or control of any real estate needed for the proposed activities,
 - (H) the extent to which the proposed activities involve intrastate relocation of jobs or business, and
 - (I) the extent of recruitment, training and promotional opportunities for targeted income groups.
- ~~(d) Planning and Technical Assistance Component. Through the Planning and Technical Assistance Component ("Planning Component"), eligible cities and counties may apply for, and the Department may award, grants for economic development planning and technical assistance activities. No single city or county shall receive more than two grants or thirty five thousand dollars (\$35,000) per year. Two or more applicants which share a planning program may submit a joint application. The maximum award for a joint application shall be thirty five thousand dollars (\$35,000) per participating applicant.~~
- ~~(1) Eligible Activities. To be eligible for funding under the Planning Component, the proposed planning studies or technical assistance must assist or support an economic development activity which, if brought to completion, will meet a national objective as specified in 24 CFR Section 570.483 and result in job creation or retention. For purposes of this subsection (d)(1), an activity shall be considered as meeting the national objective of principally benefiting TIG persons if the applicant presents convincing information that at least fifty one percent (51%) of the anticipated beneficiaries of the economic development activity assisted with funds provided by this component will be members of the TIG. General studies not~~

~~reasonably related to an economic development activity likely to result in the creation or retention of jobs are not eligible for funding under the Planning Component; nor are activities related to implementation of a program.~~

- ~~(2) As a condition of receiving a commitment of funds under the Planning Component, successful applicants shall be required to provide a cash match the amount of which shall be based on the amount of the applicant's local sales and use tax revenues relative to the sales and use tax revenues for each potentially eligible city and county, up to a maximum of twenty-five percent (25%) of the CDBG grant award.~~

- ~~(3) Application Procedures and Evaluation Criteria. Each program year, the Department shall notify all eligible cities and counties of the anticipated level of funding for the Planning Component and the earliest date for submitting applications through a notice of funding availability ("NOFA"). The Department shall review Planning Component applications to determine if they meet minimum program eligibility and cash match requirements. The Department shall notify applicants, in writing, within 60 days of receipt of a complete application of the Department's funding determination. To be eligible for funding consideration, an application must meet the following requirements:~~
 - ~~(A) The funding request shall contain all the information required in the NOFA and shall contain a certified resolution adopted by the governing body of the eligible jurisdiction documenting the availability of the cash match;~~

 - ~~(B) The funding request shall be for an eligible activity and must meet a national objective as specified in 24 CFR Section 570.483; and~~

 - ~~(C) If funds will be used to provide direct assistance to an identified business, the activity shall be considered to be technical assistance to a private, for-profit business and the application must include a letter from the benefited business which: (i) explains why the benefiting business is unable to provide funding for the activity; and (ii) conditionally commits the business to proceeding with the activities which are the subject of the CDBG grant.~~

7062.2. Special Jobs Bill Provisions

7062.3. Special 108 Loan Guaranty Pledges

- (a) Commitment of future federal allocations of CDBG Funds to the State ("State pledges") by the Department as collateral for federal guarantees of notes or other obligations issued by eligible cities and counties ("loan guarantees") pursuant to Section 108 of the Act (42 U.S.C. Sec. 5308) and 24 CFR Subchapter C, Part 570, Subpart M commencing with Section 570.700 (collectively, "Section 108") shall be subject to the following conditions:
- (1) State pledges shall be given as collateral for loan guarantees only for loans of between \$500,000 and \$2,000,000.
 - (2) The total of all outstanding State pledges at any given point in time shall not exceed \$16,000,000.
 - (3) To receive a State Pledge, in addition to the eligibility requirements established by Section 108 of the Act (42 U.S.C. Sec. 5308), an activity must: meet the eligibility requirements specified at Section 7062.1 subsection (a)(2) and (a)(3); and address one of the three CDBG national objectives specified in Section 7052 and as specified in 24 CFR Section 570.483.
 - (4) Applicants shall demonstrate a reliable repayment source and adequate security in the event the primary source of repayment defaults. The Department may require that the applicant city or county pledge other sources of repayment for the loan such as any local CDBG program income.
 - (5) State pledges shall not be committed as security for a guaranty which guaranty is the primary source of repayment for federally-issued securities.
 - (6) The proposed activity upon which the application for State pledges has been based shall be reviewed by the Department according to the HUD guidelines for financial underwriting referenced at Section 7062.1(a)(3).
 - (7) Any Loan Guaranty Pledges made pursuant to Section 7062.3 are excluded from any funding limitations set forth in this section or set forth at Health and Safety Code Section 50832(a).
- (b) Application Procedures and Evaluation Criteria.
- (1) To obtain a State pledge, eligible jurisdiction shall make a formal application in writing to the Department.
 - (2) Applications which have been determined by the Department to be complete shall be reviewed and a decision whether or not to issue

a State pledge shall be made in writing within 60 days of the date of receipt of a complete application.

- (3) In order to be considered complete, an application shall, at a minimum, include the following:
 - (A) the amount of the State pledge requested;
 - (B) sufficient information for the Department to determine that all of the conditions of subsection (a) of this Section have been met; and
 - (C) sufficient information to conduct the financial underwriting review required by subsection (a)(6) of this Section.
 - (4) An incomplete application shall be returned to the applicant with a written explanation as to the applicant's deficiencies.
- (c) If the Department determines that the requirements of subsection (a) have been met, and that the activity underlying the application conforms to the underwriting standards of subsection (a)(6), the Department shall prepare and issue to the applicant a certification containing, at a minimum, the following statements:
- (1) the State of California, acting by and through the Department, agrees to make a pledge of future CDBG grants for which the State may become eligible in the amount of the approved application as security for a loan guaranty from HUD in an equivalent amount;
 - (2) the Department possesses the legal authority to make such a pledge;
 - (3) at least seventy percent (70%) of the aggregate use of CDBG funds received by the State, guaranteed loan funds, and program income during the one, two, or three years specified by the Department for its CDBG program will be for activities that benefit low and moderate income persons; and
 - (4) the Department agrees to assume the responsibilities set forth in 24 CFR Section 570.710 requiring the Department to ensure that the applicant complies with all applicable federal requirements governing the use of guaranteed loan funds.

7062.4. Use of Un-allocated Colonia Funds

7062.5. Special Allocation for Disaster Assistance

7064. Grant Funding

- ~~(a) The amount of funds available for grants is equal to the total allocation of federal funds made available to the State under the Act after subtracting an allowable amount for State administrative costs. Grant funding is subject to the availability of federal funds.~~
- ~~(b) Eligible applicants may apply for funds to undertake any one or any combination of the eligible activities described in Section 7058.~~
- ~~(c) Except as provided in Section 7062.1, applicants may apply for funds from either one, two or three annual funding awards. The maximum grant amount per application for one funding award, regardless of the number of cities and counties included in the application, is five hundred thousand dollars (\$500,000). The maximum grant amount per application for up to three annual funding awards regardless of the number of cities and counties included in the application, is one million, five hundred thousand dollars (\$1,500,000). Funds applied for under Section 7062 are not included in these funding maximums. There is no maximum amount for applications submitted under Section 7062 other than the amount of funds set aside for this purpose. In the annual application process, priority for funding will be given to applicants that received prior State approval for a grant for the second or third year funding award. These priorities are subject to the availability of federal funds and the satisfactory performance by grantees. If federal funding to the State is insufficient to meet commitments for the second or third part of a two or three year funding award, the Department will establish a procedure for awarding available funds based on previous rankings and program performance.~~

7065. Emergency Program Amendments

- (a) A grantee may make a written request to the Department to amend or replace a project or activity set forth in a grant agreement with a project or activity which would alleviate existing conditions which pose a serious actual or impending threat to the health or welfare of the community.
- (b) Notwithstanding any other provision of this Subchapter, the Department shall approve such a request and amend the grant agreement accordingly if the Department makes the following findings in writing:
 - (1) The grantee is located in an area for which the Governor has proclaimed either a "state of emergency" or a "local emergency", as those terms are defined in Government Code Section 8558, within 18 months of the grantee's application under this section.
 - (2) The replacement project or activity is designed to alleviate existing conditions which pose a serious actual or impending threat to the health and welfare of the community;

- (3) The grantee is unable to finance the project or activity on its own, and other sources of funding are not available; and
- (4) The replacement project or activity is otherwise eligible for funding under this Subchapter.

7065.5. Emergency Disaster Assistance

- (a) Notwithstanding any provision in this Subchapter to the contrary, in the event that the Governor proclaims either a "state of emergency" or a "local emergency," as those terms are defined in Government Code Section 8558, for a period not to exceed 18 months following the date of the proclamation, the Department may make program funds available through issuance of one or more special Notices of Funding Availability ("NOFAs") to otherwise eligible applicants located in the areas covered by the proclamation pursuant to the following special conditions:
 - (1) The project or activity shall be designed to alleviate existing conditions which pose a serious actual or impending threat to the health or welfare of the community.
 - (2) The applicant shall demonstrate that it is unable to finance the project or activity on its own and that other sources of funding are unavailable.
 - (3) The proposed project or activity shall be otherwise eligible for funding under this Subchapter, or eligible pursuant to HUD eligibility criteria related to the emergency.
- (b) In order to address the most serious, emergent health, safety, and general welfare needs, the Department may adopt measures to direct funding awards to designated project or activity types, or areas. These measures may include, but are not limited to:
 - (1) Limiting a NOFA to a designated type of project or activity, or geographic area.
 - (2) Awarding bonus points within a NOFA to a designated type of project or activity, or geographic area.
 - (3) Reserving a portion of funds in a NOFA for a designated type of project or activity, or geographic area.
 - (4) Establishing maximum award amounts per applicant, type of project, or type of activity.

- (5) Making funds available through an over-the-counter process, meaning the Department continuously accepts and evaluates applications until funds are exhausted.
- (c) To the extent necessary to address the most serious, emergent health, safety and general welfare needs, and to expedite the process of making awards, the Department may alter or waive the evaluation criteria set forth in Section 7062.1 and Sections 7078 and 7078.7.

7066. Procedure for Continuation of Funding

- ~~(a) Grantees with prior State approval for two or three year funding awards shall notify the Department in writing by the final date for submitting applications of their intent to continue the second or third year part of their program. Failure by the Grantee to so notify the Department will be deemed a waiver of continued funding.~~
- ~~(b) Funding will be continued provided adequate funds have been received by the Department from HUD, and the Grantee has performed in accordance with the grant agreement. Disencumbrance of funds not expended in accordance with the grant agreement and the performance measures described in Sections 7078.4 and 7062.1(b)(7) shall constitute satisfactory performance under the grant agreement.~~
- ~~(c) For a single year funding award 24-month contract, a grantee that does not expend twenty-five percent (25%) of awarded dollars by the 12th month of the Program contract shall be sent a hold out letter for the next funding cycle. A waiver from hold out status may be granted if the grantee expends seventy-five percent (75%) of awarded dollars by the 18th month. If a grantee cannot make the 18th month expenditure milestone, the grantee may avoid hold out status and a reduction in points in future applications for failure to meet milestones if, at the Grantee's request, the Department disencumbers funds from the Program contract equal to the difference between what has been expended and 75% of awarded dollars.~~
- ~~(d) For each program activity with multi-year funding awards, if a grantee does not spend twenty-five percent (25%) of an annual funding award by the 12th month from award, the Department may disencumber the difference between what was expended for that program activity and the 25% milestone. If a grantee does not spend seventy-five percent (75%) of an annual funding award by the 18th month from award, the Department may disencumber the difference between what was expended and the 75% milestone. All unexpended funds remaining 24 months from an award shall be disencumbered by the Department. A grantee that has funds disencumbered after 24 months shall not be eligible to apply for any additional funding in future application cycles, other than for the original difference, if any, described in Section 7060~~

~~between the amount of the annual award that was disencumbered and the maximum annual award of \$500,000.~~

- ~~(e) For a multi-year funding award for a single program specific activity, the grantee shall specify in its application the times that Program funding will be needed. Department staff shall assign milestones based on the project's timeline shown in the application and the Department's need for timely expenditure of CDBG funds. If a grantee does not meet the milestones assigned to the project, the Department may disencumber funds up to the designated milestone.~~

7068. Administrative Cost Limitation

Grantees may expend up to seven and a half percent (7 1/2%) of the grant amount for administrative costs, provided that such amounts are justified for the type and complexity of the program, and that there are records to document these charges.

Activity delivery costs directly related to a specific activity are not part of the general administrative costs. For example, the cost of a housing rehabilitation specialist is a rehabilitation cost and the legal costs relating to property acquisition are acquisition costs.

Administrative costs may include, but are not limited to, the following categories:

- (a) General administrative activities. Such costs for administration include:
- (1) Salaries, wages, and related costs of the Grantee's staff engaged in general management, general legal services, accounting, and auditing.
 - (2) Travel costs incurred in carrying out the general management of the program.
 - (3) Administrative services performed under third-party contracts including contracts for such services as general legal services, accounting services, and audit services; and
 - (4) Other costs for goods and services related to the general management of the program including rental and maintenance of office space, insurance, utilities, office supplies, and rental or purchase of office equipment.
- (b) Information and resources provided to persons in the targeted income group, and to citizen organizations participating in the planning, implementation, or assessment of the Grantee's program.

- (c) Costs incurred for environmental studies, including historic preservation clearances, and specific environmental assessments and clearances related to the CDBG Program.
- (d) Fair housing activities to facilitate compliance with the requirements of Section 7084.
- (e) Community development planning activities.

If a cost cannot be associated with one of the above listed groups and cannot be associated with direct program costs, the Department shall upon the grantee's request make a determination of whether it is an administrative cost, a program cost, or an ineligible cost.

7070. Contents of the Application

Applications shall be submitted on forms prescribed by the Department and shall consist of the following items and any other information deemed necessary by the Department to judge the application. The specific forms and required information will be made available annually in the NOFA and accompanying application packet. This information provides the basis for the evaluation in Section 7078 and includes the assurances and agreements necessary for compliance with this subchapter. Where a description or analysis includes quantified information, the source of the information and the method of computation must be described. If the Department determines that the methods of computation are inaccurate or misleading, it may, after consultation with the applicant, adjust this information during the evaluation process.

7072. Submission of General Allocation and Native American Applications

~~At least seventy (70) days prior to the due date for applications, the Department will notify all eligible cities and counties of the anticipated level of funding for the State program, and will provide them with a schedule for filing applications. Applications must be received by the closing date. Each eligible applicant shall submit two (2) copies of its application to the Department.~~

7074. Preliminary Review of Applications

~~After the final date for the receipt of applications, the Department shall review each application for compliance with the provisions contained in Sections 7056 and 7070 and for a general understanding of the proposed projects. The Department will establish a schedule for applicants to respond to questions concerning their applications. These discussions will be recorded, and shall be limited to a discussion of the contents of the application. If there is a discrepancy between the applicant's written and oral statements, the written information in the application shall prevail. The~~

Department may, in its sole discretion, request additional information to complete or clarify what is contained in the application.

7076. Award of Funds

- (a) At least 70% of all CDBG funds shall be awarded to activities to benefit Targeted Income Group households pursuant to 24 CFR 570.484
- (b) At least 51% of all CDBG funds shall be awarded to activities providing housing for Targeted Income Group households pursuant to Health and Safety Code 50828, providing or improving housing opportunities for persons and families of low or moderate income or for purposes directly related to the provision or improvement of housing opportunities for persons and families of low or moderate income, including, but not limited to, the construction of infrastructure.
- (c) Pursuant to Health and Safety Code Section 50827, thirty percent of the total amount of CDBG funds available shall be allocated between three Economic Development activities per Section 7058 of this part:
1) Economic Development Enterprise Fund,
2) Economic Development Over-the-Counter
3) Planning and Technical Assistance
- (d) Pursuant to Section 916 of the Housing and Community Development Act of 1990, up to 10% of the total amount of CDBG funds available shall be made available for Colonia activities.
- (e) Pursuant to Health and Safety Code Section 50831, one-and-a quarter (1.25%) of the total amount of CDBG funds available shall be made available for Native American activities.
- (f) Pursuant to federal CDBG regulations, the remainder of the total amount of CDBG funds available after subtracting the activities in Section 7076 (c) (d) and, (e) shall be allocated to General activities, as listed below, with the amount available based on the actual application demand expressed as a dollar amount requested in response to the initial NOFA of a funding cycle.
 - 1. Housing activities.
 - 2. Public Facilities
 - 3. Public Improvements
 - 4. Public Services, not to exceed 15% of total amount of CDBG funds available, pursuant to 42 USC 5305 (a)(8).

~~(a) The Department will rate and fund applications based on all of the activities in the application. Preliminary scores for each of the rating factors set forth in Section 7078 will be totaled by the Department, and~~

~~applications will be ranked according to point totals. In case of a tied score, the application with the most points for the factor in Section 7078(a) shall receive the higher ranking. If the score remains tied after this computation, the application with the most points for the factors in Section 7078(b) shall receive the highest rating. The Department will establish a preliminary funding cutoff score based on the total amount of funds available for grants. For applications above the cutoff score, the Department will evaluate the activities in each application to determine whether or not the total amount of funds requested for housing and related activities complies with the requirements of Section 7052, which states that at least fifty-one percent (51%) of the funds made available through the State CDBG program must be used for the purpose of providing or improving housing opportunities for the targeted income group, or for directly related purposes, such as the construction of infrastructure. Targeted income group residents receiving housing or housing related benefits as a result of grants available as of that date under Section 7062.1 shall be included in the calculation of compliance with this provision. If the requirement is not met in the preliminary ranking, the Department will determine a method of increasing the amount of funding for housing activities.~~

- ~~(b) In the event there are insufficient funds to fund an applicant's whole program, this applicant will be offered the amount of funds available, provided it is sufficient to complete all or a complete portion of an activity which, if evaluated separately, would have been awarded funds.~~
- ~~(c)~~ (g) The Department may condition its award of funds in order to achieve the purposes of this subchapter and to ensure compliance with applicable State and federal law.
- ~~(d) The Department will complete the ranking process within eighty (80) days from the final date for submitting applications. Applicants will be notified in writing of point scores, fund awards, any grant conditions, and any adjustments made to comply with the requirement in Section 7052 that at least fifty-one percent (51%) of the State program funds be used for housing development and related improvements. Successful applicants have thirty (30) days from the date grant agreements are mailed by the Department to execute the grant agreements and return them to the Department and to comply with the provisions in Section 7056. The Department shall return to grantees a fully executed copy of the grant agreement provided the State has received funding authorization from HUD. Grantees shall not incur costs against the grant agreement prior to the date the agreement is signed by the State without prior State approval. If the State has not received this authorization from HUD by the time the grantee has forwarded to the Department the grant agreement executed by the grantee, the Department may withhold their execution of the agreements until this authorization is received. In the event an approved applicant elects not~~

~~to participate in the Program or does not comply with the provisions in Section 7056, the unfunded applicant receiving the highest score will be offered a grant award, provided the requirements of Section 7052 are met.~~

7078. Evaluation Criteria

- (a) Except for ED OTC activities, individual activity types will be evaluated against other activities of the same type. Where demand for a particular activity exceeds the amount of funds available, the applications for that activity shall be rated and ranked according to the rating criteria set forth in this Section. Activities will be funded in rank order, with the highest rated activities within each activity type funded first until all funds allocated for that activity, pursuant to Section 7076, have been awarded
- (b) Applications may be submitted for Planning and Technical Assistance as the sole activity or in combination with other eligible activities. Applications submitted for Planning and Technical Assistance in combination with other eligible activities shall be eligible for funding only if at least one eligible activity is funded. The amount of funds available for Planning and Technical Assistance, as announced in the NOFA, shall be allocated between sole PTA applications and PTA applications submitted in combination with other eligible activities based on the relative amount requested. Applications will be ranked, if needed, per Section 7078 (C)(3)
- (c) In the event there are insufficient funds to fund an applicant's whole activity, the applicant may be offered the amount of funds available, provided it is sufficient to complete the activity.
- (d) Applications for each eligible activity shall be evaluated on one or more of the following criteria:

(A) Housing Assistance, Public Facilities, Public Improvements, and Public Services

- 1. **NEED: Up to 400 points**
Need of the proposed activity, as demonstrated by documented deficiencies in beneficiary socio-economic condition(s); and/or in housing stock; and/or infrastructure. The need factors to be evaluated, as well as the requirements for source documentation, will be established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.
- 2. **READINESS: Up to 300 points**

Readiness of the proposed activity as demonstrated by an activity implementation plan, local government approvals, design progress, and sufficient funding to complete the project as applicable. The readiness factors to be evaluated, as well as the requirements for source documentation, will be established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.

3. **CAPACITY:** **Up to 200 points**
Capacity to implement the proposed activity, as demonstrated by performance, including but not limited to timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. The capacity factors to be evaluated as well as the requirements for source documentation will be established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.

4. **STATE OBJECTIVES:** **Up to 100 points**
Whether the application addresses one or more state objectives, as identified in the Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD pursuant to 24 CFR Part 91.

(B) Enterprise Fund:

1. **NEED:** **Up to 400 points**
Need will be based on one or more of the following factors: Unemployment and poverty levels in the jurisdiction, and market analysis. The need factors to be evaluated as well as the requirements for source documentation will be established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.

2. **READINESS:** **Up to 300 points**
Readiness factors will include but are not limited to: Program description, program organization and program operators experience and performance. The readiness factors to be evaluated as well as the requirements for source documentation will be established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.

3. **CAPACITY:** **Up to 200 points**

Capacity to implement the proposed activity, as demonstrated by performance, including but not limited to timeliness of clearance of Special Conditions, reporting and cooperation in clearing audit and monitoring findings. The capacity factors to be evaluated as well as the requirements for source documentation will be established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.

3. STATE OBJECTIVES: Up to 100 points

Whether the application addresses one or more state objectives, as identified in the Consolidated Plan or the Annual Plan of the Consolidated Plan required by HUD, pursuant to 24 CFR Part 91.

(C) Planning and Technical Assistance: PTA applications will be ranked only when the PTA allocation is oversubscribed. The Department will use the tie-breaker process for ranking as established in the Annual Plan required by HUD pursuant to 24 CFR Part 91.

(D) Un-scored Set-Aside: Applications for Housing Assistance, Public Facilities, Public Improvements, Public Services and Enterprise Fund activities may request funding for one unrated eligible activity, up to the maximum specified in the NOFA, which shall be funded if at least one other Housing Assistance, Public Facilities, Public Improvements, Public Service or Enterprise Fund activity proposed in that application ranks high enough to be funded. An applicant may apply for either an un-scored set-aside activity or a PTA but not both.

(E) Economic Development Over-the-Counter (ED OTC) activities will be evaluated on a first come first served basis.

1. Applications may apply for one or two annual funding awards. Applicants awarded two annual funding awards may not apply for Over-the-Counter Economic Development funds in the second year.
2. Applications will be evaluated pursuant to Section 7062.1(c)
3. Applications will be evaluated for compliance with HUD underwriting guidelines set forth as Appendix A to 24 CFR Part 570.

~~All applications are given quantitative ratings and ranked against each other. In rating joint applications, information for the combined needs of all participating localities will be used for the purpose of evaluating these pursuant to this section. Points are assigned according to the criteria specified in Sections 7078.1, 7078.2, 7078.3, 7078.4, 7078.5, 7078.6, and 7078.7. The maximum score possible is 1,000 points. The total number of~~

~~points in the rating system is allocated as follows:~~

- ~~(a) Poverty Index—a maximum of one hundred (100) points.~~
- ~~(b) Targeted Income Group Benefit—a maximum of three hundred (300) points.~~
- ~~(c) Need for Activity—a maximum of two hundred (200) points.~~
- ~~(d) Capacity—a maximum of one hundred and fifty (150) points.~~
- ~~(e) Performance—a maximum of one hundred and fifty (150) points.~~
- ~~(f) Leverage—a maximum of fifty (50) points.~~
- ~~(g) State Objectives—a maximum of fifty (50) points.~~

7078.1. Poverty Index (100 points)

~~The Department will compare all applicants in terms of the percentage of their population with incomes below the poverty level as defined in the latest available decennial census. The Department will compute individual scores by dividing each applicant's percentage of poverty persons by the highest percentage of poverty persons of any applicant and multiplying by 100. Applicants who elect to target their local program to fewer census tracts, or census block groups, than there are in their jurisdiction, shall receive scores based on either those targeted tracts or all the tracts, whichever results in a higher point score. In untracked counties, enumeration districts shall be used if the use of such data will result in a higher score for the applicant.~~

7078.2. Targeted Income Group Benefit (300 points)

~~All applications shall be scored and ranked using the following methodology: Extent to which the projects and activities will benefit the targeted income group (TIG) (a maximum of 300 points). The Department will assign points for benefit based on the percentage of total program funds that would benefit the targeted income group. Applicants that demonstrate the greatest benefit to the targeted income group receive the most points.~~

- ~~(a) The method of computing the amount of funds that benefit the targeted income group will vary depending on the type of activity, as follows:
 - ~~(1) For activities that provide benefits directly to individual households, such as housing rehabilitation activities, the methods of determining benefit are:
 - ~~A. If there are income eligibility limits for the beneficiaries of the activity and these limits do not exceed the targeted income~~~~~~

~~group limits for each household size, the percentage of benefit for this project or activity is 100.~~

~~B. If there are no income eligibility limits or if the income eligibility limits exceed the targeted income group limits, the number of households, by household size, within these limits shall be estimated by the applicant to determine the percentage of benefit. To receive scoring credit for the stated estimate, the application must describe the methodology used in arriving at the estimate. Statistically valid sampling or data from a reliable third party, such as the U.S. Census Bureau, will be accepted. The Department shall make available methodologies for conducting sampling which it considers statistically valid. Applicants using methodologies other than those described by the Department must demonstrate the validity of their alternative methodology. The Department, at its sole discretion, will assign a need score based upon methodologically sound data as contained within the application. In the absence of methodologically sound data, the Department may rely upon available census data to establish a score.~~

~~(2) For activities that provide services or benefits to residents of a geographic area rather than to individual households, such as a public facilities activity, the applicant's method of determining benefit will be to estimate the percentage of all households in the service area that have incomes below the targeted income group limits. If data for income is not available by household size, this estimate will be based on the targeted income group limit for a family of four. To receive scoring credit for the stated estimate, the application must describe the methodology used in arriving at the estimate. Statistically valid sampling or data from a reliable third party, such as the U.S. Census Bureau, will be accepted. The Department shall make available methodologies for conducting sampling which it considers statistically valid. Applicants using methodologies other than those described by the Department must demonstrate the validity of their alternative methodology. The Department, at its sole discretion, will assign a need score based upon methodologically sound data as contained within the application. In the absence of methodologically sound data, the Department may rely upon available census data to establish a score.~~

~~(b) The point score for the percentage of funds in each application that benefits the targeted income group will be computed by the Department for each activity as follows:~~

~~(1) The amount of funds to benefit the targeted income group for each activity is determined by dividing the number of households in this~~

~~income group to be benefited by the total number of households to benefit from the activity and multiplying by the amount of funds requested for the activity.~~

- ~~(2) To compute the percentage of funds benefiting the targeted income group, the amounts determined for each activity are added together and divided by the total amount of requested funds. This number, multiplied by 100, is the overall percentage of funds benefiting households in the targeted income group.~~
- ~~(3) To compute the actual number of points to be awarded to the applicant, the number fifty-one (51) is subtracted from the overall percentage of households in the targeted income groups benefiting from the activity, and the result is multiplied by seven and sixty nine hundredths (7.69). This product is the number of points, rounded to the nearest whole integer, assigned the application for the extent of benefit to the targeted income group. If the product is 301 or more points, the amount of points awarded shall be 300 points.~~

7078.3. Need for Activity (200 points)

~~The Department will assign points based on the seriousness of the locality's community development needs, and the impact the program will have on these needs using the following criteria:~~

- ~~(a) Need for community development assistance (200 points). The Department will evaluate each applicant's needs based upon the extent to which:
 - ~~(1) The need for the program is well-documented, and the program addresses needs which are basic and serious;~~
 - ~~(2) Most or all of the funds address basic and serious community development needs and these needs are more crucial than the needs of other applicants;~~
 - ~~(3) The program resolves completely or to a large degree basic and serious community development needs.~~~~
- ~~(b) For the following activities, the Department shall evaluate the factors stated below in establishing a need score:
 - ~~(1) For housing rehabilitation activities: The Department shall assess the relative condition of local housing stock based on data requested and described within the annual Notice of Funding Availability. The Department shall accept supplemental information regarding housing stock condition. The Department shall assign~~~~

~~competitive points based upon its evaluation of the supplemental data. An applicant may designate a target area wherein the rehabilitation will occur and data for those areas, in addition to community-wide information, will be evaluated in assessing need.~~

- ~~(2) For public works projects: The Department shall assess the relative severity of the health and safety problem to be addressed and the likelihood that the funds requested will substantially reduce or eliminate the problem. Those applications with strong third party documentation, including ranking on other agencies' funding lists, and orders from governmental agencies, will be more competitive.~~
- ~~(3) For new construction projects: The Department shall assess the relative need for new construction based on data requested and described in the annual Notice of Funding Availability. The Department shall accept supplemental information regarding new construction needs. The Department shall assign competitive points based upon its evaluation of the supplemental data.~~
- ~~(4) For community facilities and public services activities: The Department shall assess the relative need for community facilities and public services based on: (i) the severity of the problem being addressed; and (ii) the extent to which the proposed action would solve the problem. Those applicants providing strong third party documentation of the problem, including but not limited to waiting list information, ranking on other agencies' funding lists, and orders from governmental agencies, will be more competitive.~~

~~The Department will evaluate the above factors and assign points based upon the relative severity of each factor among all applicant communities.~~

7078.4. Prior Performance Operating CDBG Grants (150 points)

- ~~(a) The Department shall rate applications based on the applicant's performance in administering non-economic development grants for grants funded within the four (4) program years proceeding the program year under which the application has been submitted. Applicants that have not received a non-economic development grant during this period shall be rated on their capacity to administer a CDBG grant as set forth in section 7078.5 below.~~
- ~~(b) The Department shall give greater weight to performance under the general allocation and Native American grants than to performance under planning and technical assistance grants.~~
- ~~(c) The Department shall rate applicant's performance based on the following criteria:~~

- ~~(1) For a prior single year funding award 24 month contract, a competitive applicant will have expended at least twenty five (25%) of awarded dollars by the twelfth month of the Program contract and at least seventy five percent (75%) by the eighteenth (18th) month.~~
 - ~~(2) For each program activity with multi-year funding awards, a grantee that has more than 50% of a prior annual funding award disencumbered pursuant to subsection (c) of Section 7066 will be subject to negative performance points.~~
 - ~~(3) For a project-specific multi-year funding award, a grantee that has had more than 50% of a prior annual funding award disencumbered pursuant to subsection (d) of Section 7066 will be subject to negative performance points.~~
 - ~~(4) For all CDBG activities from open grants, the most competitive applicants will have expended a larger percentage of the awarded dollars than as set forth in this section.~~
 - ~~(5) For all CDBG activities described within this section, competitive applicants will have expended all dollars and concluded all work by the date specified in the CDBG contract with the State. If there are delays in expenditures, circumstances must be described to the Department, in writing, at the time of the delay. If the Department previously has advised the jurisdiction in writing that there will be no performance consequences as a result of the delay, then the jurisdiction will not be at a competitive disadvantage.~~
- ~~(d) The Department shall also rate applications based on the applicant's timeliness in reporting to the Department, pursuant to Section 7110. The most competitive applicants will have submitted all required reports for past non-economic development grants to the Department in accordance with deadlines established and publicized by the Department. Such reports include, but are not limited to annual grantee performance reports, quarterly or other periodic reports, and close out reports.~~
- ~~(e) The Department shall also rate applications based on the applicant's timeliness in resolving audit and monitoring findings, if any. Where a jurisdiction demonstrates a good faith attempt to resolve outstanding issues, they will not suffer a competitive disadvantage.~~
- ~~(f) Applicants with no CDBG grant experience within the timeframe described in 7078.4(a), will be at no competitive disadvantage compared to those applicants who have met but not exceeded their~~

~~milestones and will receive all of the available performance points, except those points awarded under Section 7078.4(c)(4).~~

- ~~(g) The Department shall also rate applications based on the applicant's timeliness in clearing special conditions or starting the project.~~

7078.5. Capacity (150 points)

- ~~(a) If the applicant has administered a CDBG grant within the time frame set forth in paragraph 7078.4(a) above, they will be deemed to have some capacity to administer the proposed activity and will receive up to 100 points. If the applicant has not administered a CDBG grant within the time frame set forth in paragraph 7078.4(a) above, the application will be evaluated based on the following criteria:~~

~~(1) The applicant currently has staff with the capability or experience to administer the funds being applied for as demonstrated by resumes and descriptions of duties included as part of the application; or~~

~~(2) The applicant has contracted with, or will contract with a subcontractor that has the capacity or experience to administer the funds being applied for. The applicant shall include either an executed copy of a contract between the applicant and the subcontractor, or a copy of a signed letter of interest to enter into a contract from the proposed subcontractor.~~

- ~~(b) The applicant can demonstrate an increased level of capacity by completing and documenting actions that make the proposed project ready to proceed. Applicants that document actions or activity directly linked to the proposed project or program will be awarded up to 50 points. Readiness to proceed may be demonstrated by such factors as: documented commitments from all funding sources to the project; completion of environmental reviews; site control; procurement of a program operator.~~

7078.6. Leverage (50 points)

- ~~(a) The Department shall rate applications based on private and local governmental commitments to provide additional resources which will be directly linked to the proposed project or program. To be considered for rating under this section, a commitment must be in writing, specify the dollar amount committed and, in the case of a governmental entity, be accompanied by an authorizing resolution from the governing board. Redevelopment agencies and counties providing resources to a city-sponsored program or project shall be considered local government for purposes of this section. Federal or state funds being passed through a private entity shall not be considered a commitment. For competitive~~

~~purposes, the Department will evaluate private leverage by comparing committed dollars among applications for the same activity.~~

- ~~(b) For non-monetary commitments from a local government, such as a relaxation of regulatory requirements, the Department, in its sole discretion, shall rate each jurisdiction in comparison with its competitors on the extent to which they contribute to the project's objectives. For competitive purposes, the Department will evaluate local regulatory relief by comparing local actions among applications for the same activity.~~
- ~~(c) Local government commitments shall be separated into groups based on applicants' relative tax bases. Groupings shall be calculated annually based on the information on local revenues contained in the most recently published Financial Transactions Concerning Cities and Counties of California published by the State Controller. These groupings shall be announced in the annual Notice of Funding Availability.~~

7078.7. State Objectives (50 points)

- ~~(a) The Department may award an application up to 50 points for addressing one or more state objectives as identified in the annual CDBG NOFA.~~
- ~~(b) Department selection of state objectives shall be based on one or more of the following:
 - ~~(1) Emergent circumstances such as natural disaster or economic dislocation.~~
 - ~~(2) Imbalance among the types of activities funded in prior years' awards such as housing rehabilitation programs compared to public infrastructure projects.~~
 - ~~(3) Imbalance in the geographic distribution of funds in prior years' awards.~~
 - ~~(4) Imbalance in the population served in prior years' awards such as smaller jurisdictions compared to larger jurisdictions, general program beneficiaries compared to special needs groups such as farm workers, under-trained work force, or historically unsuccessful or inactive applicants compared to active, successful applicants.~~
 - ~~(5) Federal funding priorities as publicly announced by HUD.~~
 - ~~(6) Housing and community development needs or objectives identified in the annual Consolidated Plan required by HUD.~~~~

ARTICLE 3. OTHER PROGRAM REQUIREMENTS

7080. Citizen Participation

Each applicant shall provide opportunities for the participation of all persons who may be affected by the program, especially persons with incomes in the targeted income group. The opportunity to participate shall be available, at minimum, during the following phases of the program: program design and preparation of the application; the preparation of the annual performance report required in Section 7110; the preparation of any program amendments which constitute a reallocation of more than ten percent (10%) of the total program budget; and the preparation of any program amendments which constitute changes in policies, standards, or criteria for program implementation. A minimum of one public meeting is required at each of the program phases listed above. In addition, each applicant shall hold a minimum of one public hearing prior to submitting the application to the Department. The applicant shall provide for public notice prior to each meeting and public hearing and shall make program information available to the public prior to these meetings and hearings. Applicants shall use standard legal and other forms of notice including bilingual notice in areas with concentrations of non-English speaking minorities.

Applicants shall invite written comments on the proposed program and shall write a reply to any comments received. This written correspondence shall be maintained as a part of the public record and copies shall be submitted to the Department along with the application. The Department will respond within thirty (30) days to all correspondence written directly to the Department regarding an applicant's program. Applicants shall maintain a file of documents relevant to their block grant program, including proposed activities and final application, minutes of public meetings and hearings, copies of public notices and performance reviews; these documents shall be available to the public during normal working hours. Citizens shall be provided full and timely access to program records and information in a manner consistent with applicable laws regarding personal privacy and obligations of confidentiality.

7082. Environmental Reviews

The grantee shall assume the responsibility for environmental review, decision-making and all other actions required under the California Environmental Quality Act of 1970 (CEQA), Public Resources Code 21000 et seq.; and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq.

In order to ensure compliance with NEPA, grantees shall assume the responsibilities for environmental review and decision making following the procedures for "recipients" of Block Grant funds as set forth in 24 CFR, Part

58, entitled "Environmental Review Procedures for Title I Community Development Block Grant Programs." The Department shall assume the responsibilities set forth in Subpart C of 24 CFR, Part 58 and fulfill the State's role under Subpart J of 24 CFR, Part 58.

7084. Nondiscrimination

(a) Discrimination prohibited. No person shall, on the grounds of race, color, religion, ancestry, marital status, physical handicap, national origin, sex, or any other arbitrary basis be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds made available pursuant to this subchapter. All grantees shall comply with the requirements contained in 24 CFR 570.601, 570.602, 570.607, 570.506(g).

7086. Relocation and Acquisition

The provisions of the Uniform Relocation Act, as amended, 49 CFR Part 24, and 42 U.S.C. 5304(d) shall be followed where any acquisition of real property is carried out by a grantee and assisted in whole or in part by funds allocated pursuant to this subchapter. In addition, where the rehabilitation of residential rental units results in increased rents for members of the targeted income group, the grantee shall also comply with the requirements of the above-cited sections of federal law. Relocation expenses which may, by law, be paid are eligible expenses for use of CDBG funds.

7088. Labor Standards

- (a) All laborers and mechanics employed by contactors or subcontractors on construction work assisted pursuant to this subchapter shall be paid by wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276(a) to 276(a)(5)), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the contractors and subcontractors shall comply with all regulations issued pursuant to these Acts and with other applicable federal laws and regulations pertaining to labor standards. This section shall apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families. The Secretary of Labor has, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (5 U.S.C. 133z-15), and Section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276(c))
- (b) Grantees shall also assume all responsibilities for compliance with the provisions of Cal. Labor Code, Section 1720 et seq., regarding State

labor standards compliance for Public Works as defined in Cal. Labor Code, Section 1720.

7090. Architectural Barriers Act of 1968

Every building or facility, other than a privately-owned residential structure, designed, constructed, or altered with funds made available pursuant to this subchapter, shall comply with the requirements of 24 CFR Parts 40 and 41 issued pursuant to the Architectural Barriers Act of 1968 (42 U.S.C. 4151).

7092. Hatch Act

Neither the Community Development Block Grant Program nor the funds provided therefore, nor the personnel employed in the administration of the program shall in any way or to any extent engage in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code.

7094. Lead-based Paint Poisoning Prevention Act

CDBG grantees must comply with HUD's Lead-Based Paint Regulations (24 CFR, Part 35) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.) requiring prohibition of the use of lead-based paint, whenever funding awarded pursuant to this subchapter is used directly or indirectly by the grantee for construction, rehabilitation, or modernization of residential structures, elimination of immediate lead-based paint hazards in residential structures assisted pursuant to this subchapter, or the notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1950 and funded under the CDBG program.

7096. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

CDBG funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage in the services of, or fund any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR, Part 24. "Subrecipients" includes eligible entities under 24 CFR Part 570.204(a)(2) or private entities as described under 24 CFR 570.202(c)(1).

ARTICLE 4. GRANT ADMINISTRATION

(New section) 7097. Grant Agreements

- (a) Applicants that received award letters will later receive a Grant Agreement to be executed by both the local authorized representative and the Department.
- (b) The Grant Agreement shall reserve monies from the CDBG allocation in an amount approved for funding by the Department pursuant to Section 7076.
- (c) The Grant Agreement shall include all items required in 24 CFR 570.503, all applicable sections in Articles 3 and 4 of these regulations, and the following provisions:
 - (1) The granting and cancellation of CDBG funds to the grantee;
 - (2) Grantee responsibilities for local CDBG program operation, including timeframes and milestones as set forth in the application;
 - (3) Reporting requirements, including performance reports, pursuant to Section 7108 and 24 CFR 85.41;
 - (4) Remedies available to the Department in the event of a violation, breach, or default of the Grant Agreement, including repayment of all costs of enforcement;
 - (5) Requirements that the Grantee permit the Department, HUD or their designated agents and employees the right to inspect the project or projects and all books, records and documents maintained by the Grantee in connection with the local CDBG program.
 - (6) Any other terms and conditions as required by local, state, or federal law which are necessary to ensure compliance with the requirements of the Housing and Community Development Act of 1974, as amended in 1990.

7098. Cash Depositories

Grantees are not required to establish physical separation of cash depositories for State CDBG funds. Grantees shall establish and maintain all accounts in accordance with 24 CFR 570.489(d)(2)(iii) and 24 CFR 85.20 et. seq.

7100. Bonding

Grantees shall comply with all bonding requirements described in 24 CFR

85.36(h).

7102. Retention and Custodial Requirements for Records

The grantee shall retain financial records, supporting documents, statistical records, and all other records pertinent to a grant in accordance with 24 CFR 570.502(a)(16) and 24 CFR 85.42.

7104. Program Income

- (a) "Program Income" means gross income earned by the grantee from grant-funded activities as defined in 24 CFR Section 570.489(e).
- (b) Grantees shall account for and disburse program income related to projects financed in whole or in part with grant funds pursuant to 24 CFR Section 570.489(e).
- (c) Grantees shall account for disbursement of program income annually or more frequently as required by the Department for cause.
- (d) If CDBG grant funds or local program income will be used to operate a program such as: housing rehabilitation, homeownership assistance, business financial assistance and micro enterprise financial assistance, (i.e., activities serving multiple separate projects, not persons), the applicant shall submit program guidelines to the Department for approval. No CDBG grant funds or local program income shall be expended to operate a program until the Department has approved the program guidelines in writing.

(A) The program guidelines shall describe how the program will be operated and how it will comply with State and federal regulations. In addition, program guidelines shall address the following topics:

1. Financing terms and interest rates;
2. Underwriting standards;
3. Application processing procedures and timing for loan approvals;
4. Procedures for resolving disputes between the participant and the CDBG grantee;
5. Description of any property restrictions imposed as a condition of receiving the loan (e.g., resale controls, equity sharing);

6. Loan servicing policies addressing the issues of: subordination; refinancing; change in occupancy, change in use, assumptions, and verification of payment of taxes and insurance.
7. If the program will involve rehabilitation or construction, procedures for developing the scope of work, description of the contractor procurement and payment process, and a description of the conflict resolution process in the event of a dispute between the contractor and the program participant

7106. Standards for Grantee Financial Management Systems

Grantees shall establish and maintain their financial management systems for CDBG grants in accordance with 24 CFR 85.20 et. seq.

7108. Financial Reporting Requirements

Grantees shall report at least annually on financial matters as required by 24 CFR 85.41.

7110. Monitoring and Reporting of Program Performance

- (a) Grantees shall monitor the performance of grant-supported activities to assure that time schedules are being met and the milestones in the work schedule are being accomplished. This review shall be made for each activity in the approved grant agreement.
- (b) Each grantee shall prepare annual and periodic performance reports. Except as provided for in subdivision (d) below, performance reports shall not be required more frequently than quarterly unless warranted by special circumstances.
- (c) The performance report for each activity shall describe the following:
 - (1) A description of actual accomplishments compared to the objectives established for the reporting period. In addition, where the results of activities can be quantified, unit costs shall be reported.
 - (2) Reasons why established objectives were not met.
 - (3) Other information such as a specific explanation of cost overruns or high unit costs.

- (d) Between the required performance reporting dates, events may occur which have an impact upon the activity or program. In such cases, the grantee shall inform the Department in writing as soon as the following occur:
 - (1) Problems, delays, or adverse conditions which will affect the grantee's ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of work units by the established time period. This reporting shall be accompanied by a statement of the action taken or contemplated, and any assistance needed, to resolve the situation.
 - (2) Completion of each milestone in the work schedule.
- (e) If a performance review conducted by a grantee discloses the need for change in the budget estimates in accordance with the criteria established in Section 7114, the grantee shall submit a request for budget revision pursuant to that section.
- (f) The Department will make site visits to review program accomplishments and management control systems, and to or provide program assistance.
- (g) The Department will review each grantee's performance to determine whether:
 - (1) the grantee has carried out the program as described in its application;
 - (2) the program complies with this subchapter and other applicable laws and regulations; and
 - (3) the grantee has the continuing capacity to complete the approved program according to time schedules approved by the Department.

If performance is found not to be in conformance with the grant application, agreement, or approved amendments, the Department may require corrective or remedial actions, or may recall or disencumber grant funds.

7112. Grant Payment Requirements

- (a) Grant payment methods shall minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the State to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

- (b) Grant payments are made to grantees by an advance or a reimbursement. An advance is a payment made by the State to a grantee upon its request before cash outlays are made by the grantee, subject to limitations provided in the grant agreement, and based on the type of grantee program. A reimbursement is a payment made to a grantee upon request for payment of costs already paid by grantee.
- (c) Unless otherwise provided by regulation, the State shall not withhold payments for allowable charges made by grantees at any time during the grant period unless (1) a grantee has failed to comply with the grant agreement, or (2) the grantee is indebted to the State and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the Department. Under such conditions, the Department may, upon 15 days notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the noncompliance is resolved or the indebtedness to the State is liquidated.

7114. Revision Procedures

- (a) "Cost categories," as used in this section, means any of the following: personal services, operating expenses, capital outlays, loans, grants or indirect costs.
- (b) "Grant budget," as used in this section, means the approved financial plan to carry out the purpose of the grant program, or activity. It should be related to performance for program evaluation purposes.
- (c) The grantee may not amend the program or activity in a manner which is inconsistent with the original basis for the award without the Department's written approval of the change. In addition, grantees shall request prior written approval from the Department when a program or budget revision will be necessary for the following reasons:
 - (1) Changes are to be made in the scope or the objective of the program or activity.
 - (2) Additional funding is needed.
 - (3) Amounts budgeted for indirect costs must be reallocated to absorb increases in direct costs.
 - (4) The need for transfers of funds among cost categories or activities when the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the activity budget. The same criteria shall apply to the cumulative amount of transfers among programs or activities when budgeted separately for an award, except that no transfer is permitted that would cause any

grant appropriation, or part thereof, to be used for purposes other than those intended in the grant program; or

- (5) When the Department awards a grant which provides support for both construction and nonconstruction work to make any Fund or budget transfers between the two types of work supported.
- (d) Grantees shall notify the Department whenever the amount of authorized funds is expected to exceed the needs of the grantee by more than ten thousand dollars (\$10,000).
- (e) Within 30 days from the date of receipt of the request for grant budget and program revisions, the Department shall review the request and notify the grantee whether or not the revisions have been approved. If the revision is still under consideration at the end of 30 days, the Department shall inform the grantee in writing as to when the grantee may expect the decision.

7116. Grant Closeout Procedures

- (a) The following definitions shall apply for the purpose of this section.
 - (1) "Grant closeout" is the process by which the Department determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the State.
 - (2) "Date of completion" is the date when all work under a grant is completed, or the date in the grant agreement, or any supplement or amendment thereto on which funding ends.
 - (3) "Termination of a grant" means the cancellation of funding, in whole or in part, at any time prior to the date of completion.
 - (4) "Suspension of a grant" is an action by the Department which temporarily suspends funding under the grant pending either corrective action by the grantee or a decision by the Department to terminate the grant.
 - (5) "Disallowed costs" are those charges to a grant which the Department determines to be unallowable.
- (b) The grant closeout procedures include the following:
 - (1) Upon request, the Department shall make payments to a grantee for allowable reimbursable costs under the grant being closed out.

- (2) The grantee shall refund to the Department any balance of unobligated cash advanced to the grantee that is not authorized to be retained by the grantee.
 - (3) Within 90 days after the date of completion of the grant the grantee shall provide the Department with all financial, performance, and other reports required as a condition of the grant. The Department may grant time extensions for cause when requested by the grantee.
 - (4) When authorized by the grant agreement, the Department may make a settlement for any upward or downward adjustments to the State share of costs after the reports are received.
 - (5) The grantee shall account for any property acquired in whole or in part with grant funds, in accordance with the provisions of Section 7118, pertaining to property management and Section 7104, pertaining to program income.
 - (6) In the event a final audit has not been performed prior to the closeout of the grant, the Department shall retain the right to recover the amount of disallowed costs after fully considering the recommendations of the final audit.
- (c) The Department shall provide procedures to be followed when a grantee fails to comply with the agreement. When that occurs, the Department may, after notifying the grantee in writing, suspend the grant and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with subdivision (d). The Department shall allow costs which the grantee could not avoid during the period of suspension provided that the costs meet the provisions of the U.S. Office of Management and Budget (OMB) Circular A-87.
- (d) Grants may be terminated as follows:
- (1) Termination for cause. The Department may terminate any grant, in whole or in part, at any time before the date of completion whenever the Department determines that the grantee has failed to comply with the conditions of the grant agreement. The Department shall promptly notify the grantee in writing of the determination, the reasons for the termination, and the effective date. Payments made to grantees or recoveries by the Department under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

- (2) Termination for convenience. The Department or the grantee may terminate a grant, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, and the portion of the grant to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date of the termination, and shall cancel as many outstanding obligations as possible. The Department will fund all eligible obligations that the grantee cannot cancel.

7118. Property Management Standards

Grantees shall adhere to the property management standards described in 24 CFR 85.30 et. seq.

7120. Procurement Standards

Grantees shall adhere to the requirements of 24 CFR 85.36.

7122. Audit Requirements

Grantees shall arrange for independent audits on all CDBG grants consistent with OMB Circular A-128.

7124. Lump Sum Drawdown for Property Rehabilitation Financing

Subject to the conditions prescribed in this section, grantees may draw funds from the Department in a single lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the rehabilitation of privately-owned properties as a part of the grantee's program.

The conditions prescribed for lump sum drawdown accounts are described in 24 CFR 570, Section 570.513.

7126. Conflict of Interest

Grantees shall enforce standards for conflicts of interest which govern the performance of their officers, employees, or agents engaged in the award and administration of State CDBG grant funds. The standards for conflicts of interest shall prohibit any conflict of interest as defined in Title 24 Code of Federal Regulations Part 570.611 (as revised on 10-14-83) which is hereby incorporated by reference. The Department shall use the criteria and standards set forth in Title 24 CFR 570.611 in evaluating questions concerning potential conflicts of interest.