

Laws, Policies and the State's Role in Furthering Fair Housing

Both Federal and State fair housing laws establish protected classes and govern the treatment of these individuals and are designed to affirmatively further access to housing and community resources to persons of protected classes. This section provides an overview of these laws. Where possible, hyperlinks to the statutory language and/or detailed descriptions of the laws have been included below.

Overview of Federal Fair Housing Laws and Executive Orders

[Title VI of the Civil Rights Act of 1964:](#) Prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance.

[Title VIII of the Civil Rights Act of 1968 \(Fair Housing Act\) and as amended 1988:](#) Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on:

- Race;
- Color;
- National origin;
- Religion;
- Sex;
- familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18); and
- Persons with physical, mental and developmental disabilities.

Specifically, in the Sale and Rental of Housing no one may take any of the following actions based on these protected classes:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

- Refuse to allow reasonable modifications to dwelling or common use areas, at the renter or owners expense, if necessary for the disabled person to use the housing.
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing

In Mortgage Lending: No one may take any of the following actions based these protected classes

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan.

In addition: it is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Section 504 of the Rehabilitation Act of 1973: Prohibits discrimination based on disability in any program or activity receiving federal financial assistance.

Section 109 of Title I of the Housing and Community Development Act of 1974: Prohibits discrimination on the basis of race, color, national origin, sex or religion in programs and activities receiving financial assistance from HUD's Community Development and Block Grant Program. Sections 104(b) and 106(d)(5) specifically require CDBG Program grantees to certify they will affirmatively further fair housing. This requirement was also included in Section 105(b)(13) of the National Affordable Housing Act of 1990.

Title II of the Americans with Disabilities Act of 1990: Prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities. HUD enforces Title II when it relates to state and local public housing, housing assistance and housing referrals.

Architectural Barriers Act of 1968: Requires buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped persons.

Age Discrimination Act of 1975: Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

Equal Credit Opportunity Act of 1974: Prohibits discrimination in lending based on race, color, religion, national origin, sex, marital status, age, receipt of public assistance or the exercise of any right under the Consumer Credit Protection Act.¹

Community Reinvestment Act (CRA) of 1977: According to the Federal Office of the Comptroller of the Currency, the CRA provides a framework for financial institutions, state and local governments, and community organizations to jointly promote banking services to all members of a community. In a nutshell, the CRA:

- Prohibits redlining (denying or increasing the cost of banking to residents of racially defined neighborhoods), and
- Encourages efforts to meet the credit needs of all community members, including residents of low- and moderate-income neighborhoods.”

The Community Reinvestment Act (CRA) provides that “regulated financial institutions have continuing and affirmative obligations to help meet the credit needs of the local communities in which they are chartered.” CRA establishes federal regulatory procedures for monitoring the level of lending, investments, and services in low- and moderate-income neighborhoods defined as underserved by lending institutions. CRA creates an obligation for depository institutions to serve the entire community from which its deposits are garnered, including low- and moderate-income neighborhoods.

Home Mortgage Disclosure Act (HMDA) of 1975: Requires banks, savings and loan associations, and other financial institutions to publicly report detailed data on their home lending activity. Under HMDA, lenders are required to publicly disclose the number of loan applications by census tract, income, race, and gender of the borrower, the type of loan and the number and dollar amount of loans made. Starting in 1993, independent mortgage companies were also required to report HMDA data. HMDA creates a significant and publicly available tool by which mortgage lending activity in communities can be assessed. HMDA data can be analyzed to determine bank performance and borrower choices.

Executive Order 11063: Prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

Executive Order 12892 (as amended): Requires federal agencies to affirmatively further fair housing in their programs and activities, and provides that the Secretary of HUD will be responsible for coordinating the effort. The Order also establishes the President's Fair Housing Council, chaired by the Secretary of HUD.

¹ *Closing the Gap: A Guide to Equal Opportunity Lending*, The Federal Reserve Bank of Boston, April 1993.

Executive Order 12898: Requires each federal agency conduct its program, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.

Executive Order 13166: Eliminates, to the extent possible, limited English proficiency as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally conducted programs and activities.

Executive Order 13217: Requires federal agencies to evaluate their policies and programs to determine if any can be revised or modified to improve the availability of community-based living arrangements for persons with disabilities.

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| State Fair Housing Laws and Policies |
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The State of California is committed to the objective of promoting fair housing choice in an affirmative manner and complies with the following State laws and codes.

California Government Code section 12955 et seq - Fair Employment and Housing Act (FEHA): Prohibits all housing providers, including local governments, from discriminating in housing development and all actions related to the provision of housing based on:

- Age (40 and over)
- Ancestry
- Color
- Religious Creed
- Denial of Family and Medical Care Leave
- Disability (mental and physical) including HIV and AIDS
- Marital Status
- Medical Condition (cancer and genetic characteristics)
- Genetic Information
- National Origin
- Race
- Religion
- Sex (which includes pregnancy, childbirth and medical conditions related to pregnancy or childbirth)
- Gender, Gender Identity, and Gender Expression
- Sexual Orientation

Specifically, Government Code section 12955(I) prohibits discrimination through public or private land use practices, decisions and authorizations. Government Code section 12955.8 prohibits land use policies and practices that have a disproportionate impact on persons protected by the fair housing laws unless they are necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and there is not less restrictive means to achieve the purpose.

Proof of an intentional violation includes, but is not limited to, an act or failure to act that demonstrates an intent to discriminate in any manner in violation of the statute. A person intends to discriminate if race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

The statute also describes that proof of a violation causing a discriminatory effect is shown if an act or failure to act has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. A business establishment whose action or inaction has an unintended discriminatory effect shall not be considered in violation if the business can establish the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it purports to serve. In cases that do not involve a business, the person whose action or inaction has an unintended discriminatory effect shall not be considered in violation if the person can establish the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it purports to serve. For both businesses and individuals there must not be a less restrictive means to achieve the purpose.

The FEHA expressly prohibits the existence of restrictive covenants that make housing unavailable based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income or ancestry. County recorders, title insurance companies, escrow companies, real estate brokers, real estate agents or associations that provide declarations, governing documents, or deeds, are required to place a cover page over the document, or a stamp on the first page of the document, specifically indicating any restrictive covenant contained in the document violates state and federal fair housing laws and is void.

According to the California Department of Fair Employment and Housing, effective January 1, 2006, any person holding an ownership interest of record in a property that he or she believes is subject to an illegal restrictive covenant may record a document titled *Restrictive Covenant Modification* with the county recorder. The modification request must include a complete copy of the original document containing the unlawfully restrictive language with the restrictive language stricken. Following approval by the county counsel, the county recorder must record the modification document (Government Code section 12956.2, subdivisions (a) and (b)).

For common interest developments or associations, Civil Code section 1352.5, requires the board of directors, without approval of the owners, to delete any unlawful restrictive covenant and restate the declaration or governing document without the restrictive

covenant but with no other change to the document. A board of directors of a common interest development or association is not required to obtain approval from the county recorder prior to removal of restrictive covenant language.

The FEHA also incorporates the [Unruh Act \(Civil Code section 51\)](#), the [Ralph Act \(Civil Code section 51.7\)](#) and [Bane Act \(Civil Code section 52.1\)](#) as follows:

- The Unruh Civil Rights Act (California Civil Code section 51) provides protection from discrimination by all business establishments in California, including housing and accommodations, because of age, ancestry, color, disability, national origin, race, religion, sex, and sexual orientation. While the Unruh Civil Rights Act specifically lists “sex, race, color, religion, ancestry, national origin, disability, or medical condition” as protected classes, the California Supreme Court has held that protections under the Unruh Act are not necessarily restricted to these characteristics.
- The Ralph Civil Rights Act (California Civil Code section 51.7) forbids acts of violence or threats of violence because of a person’s race, color, religion, ancestry, national origin, age, disability, sex, sexual orientation, political affiliation, or position in a labor dispute (California Civil Code section 51.7). Hate violence can be: verbal or written threats; physical assault or attempted assault; and graffiti, vandalism, or property damage. providing civil and administrative remedies for those who are victims of this type of violence, or of violence directed against any particular class of persons. The Ralph Act provides that all persons have the right to be free from violence committed against themselves or their property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, position in a labor dispute, or because another person perceives them to have one or more of these characteristics.
- The Bane Civil Rights Act (California Civil Code section 52.1) provides another layer of protection for fair housing choice by protecting all people in California from interference by force or threat of force with an individual’s constitutional or statutory rights, including a right to equal access to housing.

In addition to these acts, Government Code sections 11135, 65008, and 65580-65589.8 prohibit discrimination in programs funded by the State and in any land use decision as follows:

[Government Code section 11135 - 11139.7](#): Provides protection from discrimination of protected classes from any program or activity that is conducted, funded directly by, or receives any financial assistance from the State. Specifically, whenever a state agency that administers a program or activity has reasonable cause to believe a contractor, grantee, or local agency has violated the provisions of Section 11135, or has adopted any regulation to implement such section, the head of the state agency shall notify the contractor, grantee, or local agency of such violation.

If it is determined that a contractor, grantee, or local agency has violated the provisions of this article, the state agency that administers the program or activity involved shall take action to curtail state funding in whole or in part to such contractor, grantee, or local agency.

Welfare and Institutions Code sections 5115 and 5116 (The Lanterman Developmental Disabilities Services Act): Declares that mentally and physically disabled persons are entitled to live in normal residential surroundings and grants to each person in the State with a developmental disability a right to services and support in the “least restrictive environment.”

In addition, the Act provides that the use of property for the care of six or fewer mentally disordered or otherwise handicapped persons is required by State law. Specifically, the act states a State authorized or certified family care home, foster home, or group home serving six or fewer persons with disabilities or dependent and neglected children on a 24-hour-a-day basis is considered a residential use to be permitted in all residential zones. Local agencies must allow these licensed residential care facilities in any area zoned for residential use, and may not require licensed residential care facilities for six or less to obtain conditional use permits or variances that are not required of other family dwellings. This requirement is also provided for in Health and Safety Code Section 1267.8, 1566.3, 1568.08 and these sections declares “residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which is related to the residential use of property.” This is critical as a community’s zoning ordinance can potentially restrict access to housing for households failing to qualify as a “family” by the definition specified in the zoning ordinance. California court cases⁴ have ruled that a definition of “family” that: 1) limits the number of persons in a family; 2) specifies how members of the family are related (i.e. by blood, marriage or adoption, etc.), or (3) a group of not more than a certain number of unrelated persons as a single housekeeping unit, is invalid. Court rulings stated that defining a family does not serve any legitimate or useful objective or purpose recognized under the zoning and land planning powers of the jurisdiction, and therefore violates rights of privacy under the California Constitution. A zoning ordinance also cannot regulate residency by discrimination between biologically related and unrelated persons. Furthermore, a zoning provision cannot regulate or enforce the number of persons constituting a family.

Government Code section 65008: Prohibits localities from denying the enjoyment of residence, land ownership, tenancy, or any other land use because of religious beliefs or ethnic origins. It also prohibits local governments from enacting or enforcing ordinances that prohibit or discriminate against housing or emergency shelter because of the method of financing, the owner or intended occupants are members of a protected class, the housing or shelter is intended to be occupied by low or moderate income households, the development consists of multifamily housing, consistent with zoning & general plan even if site has not yet been rezoned to conform with a more recent general plan.

Housing Accountability Act (Government Code section 65589.5): Prohibits a jurisdiction from disapproving a housing development project, including housing for farmworkers and for very low, low, or moderate-income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low, low, or moderate-income households, including through the use of design review standards, unless it makes at least one of five specific written findings based on substantial evidence in the record (Government Code Section 65589.5).

Pursuant to the Housing Accountability Act, a local government is prohibited from making the finding regarding zoning and general plan inconsistency (Section 65589.5(d)(5)) to disapprove a development if the jurisdiction identified the site in its general plan (e.g., housing or land-use element) as appropriate for residential use at the density proposed or failed to identify adequate sites to accommodate its share of the regional housing need for all income groups.

Chapter 633, Statutes of 2007, extended these provisions to emergency shelters and transitional housing, and prohibits the use of the zoning and general plan inconsistency finding to disapprove an emergency shelter if the jurisdictions have:

- not identified a zone(s) where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit,
- not demonstrated the identified zone(s) include sufficient capacity to accommodate the need for emergency shelter, or
- not demonstrated the identified zone(s) can accommodate at least one emergency shelter.

This provision applies to any site identified in any element of the general plan for industrial, commercial, or multifamily residential uses. In any court action, the burden of proof is on the local jurisdiction to demonstrate its housing element satisfies the above requirements.

General State housing laws that have a direct and/or indirect equal housing opportunity benefit are as follows:

Density Bonus Law (Government Code section 65915): Requires local government to provide density increases and reduce regulatory barriers for housing developments affordable to qualifying low and moderate income households. Specifically, the law:

- Requires a sliding scale of density bonuses based on affordability levels (5-35 percent density increase)
- Prescribes the number of incentives and concessions to be provided
- Limits the number of parking spaces that can be required

A local government shall grant a density bonus of at least 20 percent (five percent for condominiums) and an additional incentive, or financially equivalent incentive(s), to a developer of a housing development agreeing to provide at least:

- Ten percent of the units for lower income households;
- Five percent of the units for very low income households;
- Ten percent of the condominium units for moderate income households;
- A senior citizen housing development; or
- Qualified donations of land, condominium conversions, and child care facilities.

In addition to the density bonus stated above, the statute includes a sliding scale that requires:

- An additional 2.5 percent density bonus for each additional increase of one percent Very Low income units above the initial five percent threshold;
- A density increase of 1.5 percent for each additional one percent increase in Low income units above the initial 10 percent threshold; and
- A one percent density increase for each one percent increase in Moderate income units above the initial 10 percent threshold.
- These bonuses reach a maximum density bonus of 35 percent when a project provides either 11 percent very low income units, 20 percent low income units, or 40 percent moderate income units.

In addition to a density bonus, developers may also be eligible for one of the following concessions or incentives:

- Reductions in site development standards and modifications of zoning and architectural
- design requirements, including reduced setbacks and parking standards;
- Mixed used zoning that will reduce the cost of the housing, if the non-residential uses are
- compatible with the housing development and other development in the area; and
- Other regulatory incentives or concessions

Second Unit Law (Government Code section 65852.1-65852.2): Requires local government to establish a process to consider approval of the development of secondary dwelling units. Local governments are required to provide ministerial approval of second units and promote their development. Second units can be a particularly important housing resource for elderly persons and persons with disabilities.

No Net Loss (Government Code section 65863): Requires a local government's housing element inventory of sites to accommodate its housing needs be maintained and prohibits downzoning of sites identified in the housing element unless the community can establish no net loss of housing capacity and sufficient adequate sites to accommodate the regional housing need remain.

Priority Allocation of Water and Sewer Service (Government Code section 65589.7): To improve effectiveness of the law in facilitating housing development for lower-income households, GC Section 65589.7 requires local governments to submit a

copy of the housing element to water and sewer providers and requires such providers to establish procedures to grant priority service to housing for lower income households. Specifically, to facilitate implementation, water and sewer providers should establish procedures to:

- Grant priority to proposed development that includes housing affordable to lower-income households.
- Prohibit water and sewer providers from denying or conditioning the approval or reducing the amount of services for an application for development that includes housing affordable to lower-income households, unless specific written findings are made; and
- Require Urban Water Management Plans include projected water use for single-family and multifamily housing needed for lower-income households.

Least Cost Zoning (Government Code Section 65913.1): Requires local governments to zone sufficient land for residential use with *appropriate standards*, in relation to zoning for nonresidential uses, to meet the housing needs of all income groups. Appropriate standards are defined to mean densities and development standards must contribute significantly to the economic feasibility of producing housing at the lowest possible cost.

State Housing Element Law and the Regional Housing Needs Allocation Process

State Housing Element Law Government Code Section 65580-65589.3) Overview:

State law requires each city and county to adopt a general plan containing at least seven mandatory elements including housing. Unlike the other general plan elements, the housing element, required to be updated every five to eight years, is subject to detailed statutory requirements and mandatory review by HCD. Housing elements have been mandatory portions of local general plans since 1969. This reflects the statutory recognition that housing is a matter of statewide importance and cooperation between government and the private sector is critical to attainment of the State's housing goals. The availability of an adequate supply of housing affordable to all Californians including workers, families, persons with disabilities and seniors is critical to the State's long-term economic competitiveness and the quality of life for all Californians.



In December 2009, HCD launched the [Building Blocks for Effective Housing Elements](#), an enhanced web-based technical assistance tool to assist local governments in updating housing to address the statutory requirements of State housing element law. The website includes information on requisite analysis, as well as sample programs and analyses to effectively address housing needs, the specific requirements of State law and further of local goals and objectives.

The State mandates local governments address their communities existing and projected housing needs, including the needs of lower-income households, by requiring all cities and counties to adopt a housing element to guide residential development policies and land use patterns and direct public investments to achieve those policies. Housing elements are required to include a thorough analysis of needs and resources available to meet those needs, an evaluation of potential constraints to housing, and adoption of policies and programs to address housing needs. The State's housing element law planning framework was the inspiration and model for the federally mandated Comprehensive Housing Affordability Strategy (CHAS) which became the Consolidated Plan.

Housing element law recognizes the most critical decisions regarding housing development occur at the local level within the context of the periodically updated general plan. The housing element component of the general plan requires local governments to balance the need for growth, including the need for additional housing, against other competing local interests.

While land-use planning is fundamentally a local issue, the availability, affordability and access to housing is a matter of statewide importance and concern. Housing element law promotes the State's interest in providing equal access to housing, encouraging open markets and providing opportunities for the private sector to address the State's housing demand – for all income levels, while leaving the ultimate decision about how and where to plan for growth at the regional and local levels.

Housing element law and the Regional Housing Need Process (RHNP) requires local governments to be accountable for ensuring that projected housing needs for persons of all income levels can be accommodated. The process maintains local control over where and what type of development should occur in communities while promoting equal housing opportunity and facilitating the ability of the private sector to meet market demand.

In general, a housing element must at least include the following components:

Existing and Projected Housing Needs Assessment: The element must evaluate existing housing needs and include program actions and resources, where appropriate, to address identified housing needs of the following:

- the number of households overpaying for housing;
- living in overcrowded conditions;
- persons with special housing needs (e.g., the elderly, persons with disabilities including persons with developmental disabilities, large families, homeless);
- the condition of the existing housing stock; and
- and subsidized or assisted affordable units at-risk of converting to market-rate.

Local governments are also required to specifically identify the number and housing needs of extremely-low income households (households earning 30 percent of the area median income or below).

The projected housing need must include the city or county's share of the regional housing need as established in the RHNP prepared by the COG. The allocation establishes the number of new units needed, by income category, to accommodate expected population growth over the planning period of the housing element. The RHNP provides a benchmark for evaluating the adequacy of local zoning and regulatory actions to ensure each local government is providing sufficient appropriately designated land and opportunities for housing development to address population growth and job generation.

Sites Inventory and Analysis: A detailed land inventory and analysis must be provided including a parcel specific inventory of sites sufficient to accommodate the jurisdiction's regional housing need by income and must describe zoning (and densities) general plan designation, size and existing uses for non-vacant parcels. The sites inventory must also consider environmental constraints and the availability of infrastructure.

The analysis must evaluate the suitability, availability and realistic development capacity of each site to accommodate the jurisdiction's share of the regional housing need by income level. If the analysis does not demonstrate adequate sites, appropriately zoned, to meet the jurisdiction's share of the regional housing need, by income level, the element must include a program to provide the needed sites including providing zoning that allows owner-occupied and rental multifamily uses "by-right" with minimum densities and development standards that allow at least 16 units per site.

This analysis is particularly important in promoting equal housing opportunity in that it ensures all communities create opportunities for and do not arbitrarily enact access barriers because of income or other protected conditions. In the housing element land use context, density acts as a proxy for affordability as the development of housing affordable to lower income households is generally dependent on the economies of scale facilitated by increased density. And because minority and other protected classes are often disproportionately represented in lower income households, promoting housing affordability promotes equal housing access.

The inventory must also identify opportunities for a variety of housing types for all income levels including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters and transitional housing.

In particular, and unique to California, all local governments are required to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit. In addition, transitional and

supportive housing is required to be considered a residential use of property and may only be subject to restrictions and land use controls that apply to other residential units of the same type in the same zone. For example, if apartments are permitted within a particular zone without a conditional use permit (CUP), local governments may not require a CUP for the approval of transitional or supportive housing within that zone.

Analysis of Constraints on Housing: Local governments must include a thorough evaluation of its zoning and regulatory requirements for their impact on housing construction, maintenance and improvement. The statute specifically requires analyses of:

- local land-use controls
- fees and exactions,
- permit and processing procedures;
- building codes and their enforcement;
- on- and off-site improvement requirements, and
- potential constraints on the development or improvement of housing for persons with disabilities.

The law recognizes local ordinances and policies are generally enacted to protect the health and safety of residents and further the general welfare. However, periodic reexamination is required to evaluate whether, such ordinances and requirements, under current conditions, may constitute a barrier to the maintenance, improvement or development of housing for all income levels. This periodic analysis may also reveal policies with a disproportionate or negative impact on the development of particular housing type (e.g., multifamily, group homes) or on housing developed for low- or moderate-income households.

Ordinances, policies or practices which have the effect of excluding housing affordable to low- and moderate-income households may also violate State and federal fair housing laws which prohibit land-use requirements that discriminate or have the effect of discriminating against affordable housing.

Local land-use controls: The element should identify all relevant land-use controls, discuss impacts on the cost and supply of housing and evaluate the cumulative impacts of standards, including whether development standards impede the ability to achieve maximum allowable densities. The analysis must also make a determination whether land-use controls constrain the development of multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. The types of land-use controls appropriate to analyze will vary from jurisdiction to jurisdiction however, the

following is a list of typical development standards which should be identified and analyzed by zoning category:

- density;
- parking requirements (including standards for enclosed or covered and guest spaces);
- lot coverage;
- height limits;
- lot size requirements;
- unit size requirements ;
- floor area ratios;
- setbacks;
- open space requirements; and
- growth controls including urban growth boundaries and any moratoria and prohibitions against multifamily housing

Fees and exactions: Fees and exactions can impact the cost, and feasibility of housing development and its affordability, and involves issues of private property rights. For example, high planning and site development fees can impact property owners' ability to make improvements or repairs, especially for lower-income households. Development projects are subject to fees and exactions from a growing number of public entities, ranging from special districts to regional agencies. Housing element updates should:

- Identify and analyze permit processing and planning fees, and development and impact fees and exactions;
- Identify exactions imposed on development;
- Estimate and analyze total development fees imposed by the city/county by unit type such as typical single family and multifamily development and total cost of fees; and
- Identify any policies or efforts to moderate high fee impacts for housing for lower-income households, such as fee waivers, fee deferrals, streamlined fee processing, and consolidated fee schedules.

Permit and processing procedures: Processing and permit procedures can pose a considerable constraint to the production and improvement of housing. Common constraints include lengthy processing time, unclear permitting procedures, layered reviews, multiple discretionary review requirements, and costly conditions of approval. These constraints increase the final cost of housing, uncertainty in the development of the project, and overall financial risk assumed by the developer. The housing element should analyze the following:

- Describe and analyze the types of permits, extent of discretionary review including required approval findings, procedures, and processing time required for residential development by zoning district;

- Describe and analyze the total permit and entitlement process for a typical single-family unit, subdivision, and multifamily project;
- Describe and analyze all permits applicable to residential development, including conditional use permits and additional mechanisms that place conditions and performance standards;
- In the case where discretionary approval from the local legislative bodies is required for permitted uses, the element should describe how the standards of decision-making promote development certainty; and
- Describe and analyze other applicable regulations and processes such as design review and planned unit development (PUD) districts.

Building codes and on/off-site improvement requirements: Building codes and On/Off-site improvement standards establish infrastructure or site requirements to support new residential development such as streets, sidewalks, water and sewer, drainage, curbs and gutters, street signs, park dedications, utility easements and landscaping. While these improvements are necessary to ensure that new housing meets the local jurisdiction’s development goals, the cost of these requirements can represent a significant share of the cost of producing new housing. The housing element should identify and analyze the following:

- Identify and analyze any local amendments to the State housing law or UBC;
- Discuss the type and degree of enforcement;
- Describe any efforts to link code enforcement activities to housing rehabilitation programs;
- street widths, curb, gutter, and sidewalk requirements, water and sewer connections, landscaping, circulation improvement requirements; and
- level of service standards or mitigation thresholds.

Potential constraints on the development or improvement of housing for persons with disabilities (SB 520 - Chesbro, Chapter 671, Statutes 2001): Housing element law specifically requires cities and counties to analyze the impact of local land use, permit processing, fees, code enforcement and site improvements on the development of housing for persons with disabilities, including persons identified in the communities analysis of *special housing needs* (described above). This affirmative obligation to identify potential barriers to housing for disabled persons reinforces federal and State laws prohibiting discrimination and promoting access and also requires specific “local efforts to remove governmental constraints that hinder the locality frommeeting the need for housing for persons with disabilities, supportive housing, transitional housing and emergency shelters.” Housing element law requires both an analysis of potential barriers *and* actions to remove local requirements or policies that negatively impact the provision or maintenance of housing for persons with disabilities.

Specifically, the analysis of potential and actual constraints upon the development, maintenance and improvement of housing for persons with disabilities must include, but need not be limited to:

1. Review zoning and land-use policies and practices to ensure:
 - compliance with fair housing laws;
 - provision for group homes over six specifically for the disabled, other than those residential zones covered by State law;
 - a broadened definition of family that 1) provides zoning code occupancy standards specific to unrelated adults and, 2) complies with Fair Housing Law;
 - siting or separation requirements for licensed residential care facilities, to determine extent to which the local restrictions effects the development and cost of housing;
 - any minimum distance requirements in the land-use element for the siting of special needs housing developments in relationship to each other do not impact the development and cost of housing for persons with disabilities; and
 - Alternate residential parking requirements, including reduction, for persons with disabilities.

2. Evaluation of the permit and processing procedures for:
 - process to request accessibility retrofits;
 - compliance with all State laws regulating a “by right” designation and/or permit requirement of licensed residential care facilities with fewer than six persons in single-family zones;
 - conditions or use restrictions on licensed residential care facilities with greater than 6 persons or group homes that will be providing services on-site and the extent to which they effect the development or conversion of housing for persons with disabilities; and
 - group home public comment period and the extent to which it differs from other types of residential development.
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3. Review of building codes to identify:
 - the year of the Uniform Building Code adoption;
 - any amendments that might diminish the ability to accommodate persons with disabilities; and
 - adopted universal design elements that address limited lifting or flexibility (i.e., roll-in showers and grab bars), limited mobility (i.e., push/pull lever faucets, wide swing hinges) and limited vision (i.e., additional stairwell and task lighting).

4. Review for reasonable accommodation procedure to:
 - identify and analyze whether the locality has an established reasonable accommodation procedure;
 - describe the process for requesting a reasonable accommodation retrofit (i.e. ramp request); and
 - describe the extent to which existing requirements constrain or facilitate the application of an existing or proposed reasonable accommodation procedure (i.e., permit processing, zoning, building codes, accommodating procedures for the approval of licensed residential care facilities and Fair Housing Amendment Act (FHAA) physical accessibility efforts [i.e., ADA retrofit efforts or other measures that provide flexibility]).
5. Review for programs that:
 - address the needs of persons with disabilities and the extent to which the local process for accommodation is different from that for other types of residential development;
 - remove or mitigate identified constraints and address the housing needs of the disabled;
 - ensure information is available on how to request a reasonable accommodation with respect to zoning, permit processing, or building laws; and
 - assist in meeting identified needs. Contact local service providers of special needs groups to assist in the identification and analysis of constraints to the provision of housing for persons with disabilities, including lack of capacity and available resources and unmet needs.

For each policy, procedure or requirement identified as a governmental constraint, the element must include programs to address and remove or mitigate the constraint.

Housing Programs: Programs must be adopted in the housing element to identify adequate sites to accommodate the locality's share of the regional housing need; assist in the development of housing for extremely low, lower- and moderate-income households; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote equal housing opportunity; and preserve the at-risk units identified.

Housing element law establishes an affirmative obligation for local governments to adopt *and implement* program actions. Specifically, the law requires adoption of programs, each with a timeline for implementation and that the programs provide a beneficial impact within the planning period of the element. Each of the mandated programs have the potential to directly benefit low and moderate income households as well as protected classes identified in State and federal fair housing laws.

To make adequate provision for the housing needs of all income levels, a jurisdiction must identify programs in their housing element to:

- identify adequate sites, with appropriate zoning and development standards to accommodate the regional need by income level;
- assist in the development of adequate housing to meet the needs of extremely low-, very low-, low- and moderate-income households;
- address, and remove governmental constraints, including housing for persons with disabilities;
- conserve and improve the condition of the existing affordable housing stock;
- preserve assisted housing developments at-risk of conversion to market-rate; and
- promote equal housing opportunities for all persons.

For example, if the element identifies permit processing requirements with a negative impact on the approval of housing for persons with disabilities or lower-income households, the local government must include a program to remove or mitigate those requirements. With regard to removal of governmental constraints, the law also specifically requires local governments to provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

Significantly, in addition to any other obligation under federal or State law, housing element law requires local governments to adopt within their general plan, specific programs and policies that will affirmatively promote equal housing opportunity.

Public Participation: While general plan statutes require public noticing, etc., housing element law specifically requires local governments to *make a diligent effort to achieve the public participation of all economic segments of the community*. This unique obligation ensures that cities and counties proactively seek to engage low and moderate income households including those households with special housing needs, in the development of the element. The public participation requirement of housing element law presents an opportunity to engage constituents in a dialogue – defining problems and creating solutions. The inclusion of community stakeholders in the housing element public participation process helps ensure appropriate housing strategies are more efficiently and effectively evaluated, developed, and implemented.

Regional Housing Need Allocation Process

As described above, State housing element law, requires a quantification of each jurisdiction’s existing and projected housing needs for use in periodic updates of each city and county’s mandatory general plan housing element. This process to quantify the projected housing need is commonly known as the regional housing need allocation (RHNA). Local regulation of the housing supply through planning and zoning powers directly influences housing supply and availability statewide and within regional housing markets and as a result affects the State’s ability to achieve its housing goal of “decent housing and a suitable living environment for every Californian family.”

The RHNA process addresses this statewide goal and concern, and reflects shared responsibility among local governments for accommodating the housing needs of all economic levels of the population. It is an iterative process conducted among state,

regional, and local levels of government driven by existing and projected population growth. The RHNA process is governed by Government Code Section 65584, where shares of the region-wide housing need are determined for all cities and counties in a region.

The statute requires the State, through HCD, working with regional agencies, to identify each region’s share of the future statewide housing need to be addressed in local housing elements. The RHNA process begins no later than two years prior to the housing element update to provide sufficient time for HCD to allocate shares of the statewide need to council of governments (COGs), for COGs to work with their member jurisdictions to allocate specific housing need objectives, and for local governments to revise their housing elements to incorporate their individual allocations.

Table 3-1
Regional Housing Needs Allocation Process

| RHNA Determination | RHNA Plan | RHNA Allocation |
|---|------------------------------------|---|
| Issued by HCD | Issued by COG | Issued by COG |
| For a county or multi-county region | By jurisdiction | Individual jurisdiction’s allocation |
| By 4 income categories | By 4 income categories | By 4 income categories |
| Issued by HCD as result of HCD-COG consultation | Subject to HCD Review and Approval | To be accommodated in the housing element |

In consultation with the appropriate COGs, HCD’s determination of the regional housing need for each region (RHNA Determination) is based on the State Department of Finance’s (DOF’s) county-level estimates and projections of population and housing/households and the regional population forecasts used in preparing the regional transportation plans. The RHNA Determination also includes vacancy allowance and income consideration from the U.S. Census Bureau and a replacement housing allowance.

In developing a RHNA plan, the COG determines the amount of residential development need each member city and county must accommodate during their housing element planning period: The COGs develop the distribution of the regional allocation for each member city (and the unincorporated portion of the counties) in draft RHNA plans, following consideration of statutorily required factors such as market demand, commuting patterns, job housing relationship, site and public facility availability, and type and tenure of housing need, needs of farmworkers, or the conversion of assisted units. For non-COG counties, which are mostly smaller and rural counties, HCD acts in the role of the COG.

Pursuant to Government Code 65584(d) RHNA Plans must meet the following objectives:

- (1) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties within the region in an equitable manner, which shall result in each jurisdiction receiving an allocation of units for low- and very low income households.
- (2) Promoting infill development and *socioeconomic equity*, the protection of environmental and agricultural resources, and the encouragement of efficient development patterns.
- (3) Promoting an improved intraregional relationship between jobs and housing.
- (4) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category, as compared to the countywide distribution of households in that category from the most recent decennial United States census.

For each city and county, the RHNA is distributed among four income categories to address the required provision for planning for all income levels, consistent with income definitions of State law:

- Very Low (0-50% of Area Median Income (AMI))
- Low (51-80% of AMI)
- Moderate (81-120% of AMI)
- Above Moderate (over 120% of AMI)

This individual RHNA allocation by income is used as the basis for evaluating the residential development capacity of a locality's housing element for the planning period. To accommodate its RHNA, the housing element must demonstrate site development capacity equivalent to, or exceeding the projected housing need, to facilitate development of a variety of types of housing for all income levels.

Of particular importance in promoting fair housing, RHNA requirements specifically mandate COGs develop methodologies to ensure that overconcentration of lower income households within the region is avoided and housing opportunities are created throughout the region. For example, a COG could adjust the methodology to gravitate toward a regional/county share of lower income household percentage in total households in the region/county, or adjustment factors applied to jurisdictions with an overconcentration of lower-income households. This is intended to promote a gradual dissipation of overconcentration of lower income households throughout the region, and along with other provisions of housing element law, and remove zoning restricting housing opportunities for lower-income families.

Chapter 728, Statutes of 2008 (SB 375, Steinberg) established a policy framework intended to further integrate regional transportation and land-use planning to reduce greenhouse gas emissions. SB 375 amended the timing of the State RHNA process for housing element updates of local governments' General Plans with Regional Transportation Plan (RTP) updates.

In integrating transportation and housing, social equity/environmental justice is a critical consideration. Land use decisions, climate change, transportation policies, and funding priorities to concentrate development in infill and transportation corridors affect access to housing and employment opportunities and may impact households of lower-income and/or of color/race.

Federal and State civil rights, fair housing, and environmental justice laws are applicable to the integration of regional transportation planning with regional housing needs planning. To create vibrant, livable and diverse communities and minimize and mitigate any adverse impacts, responsible planning for housing and for transportation must be made with social equity and environmental justice in mind.

The federal laws directly governing regional transportation plans and the State law governing the regional housing need allocation process incorporate social equity provisions via policy direction, public participation processes, and content requirements. Provisions in the State housing element law², including the regional housing need allocation (RHNA) objectives listed above address fair housing, housing need distribution by income, overconcentration of lower income households, and jobs and housing relationships. The law also requires the RHNA Plan to ensure the total regional housing need, by income category, is maintained and that “...each jurisdiction in the region receive an allocation of units for low- and very low-income households.” The RHNA must allocate units to accommodate low-income households in every community and is not to exacerbate over-concentration of lower income households.

The State’s long-standing housing element law will continue to be a cornerstone for attaining more sustainable, and as referenced above, more equitable, development patterns. With its requirements for zoning for minimum amounts of housing for all economic segments, planning for a mix of housing types at minimum density standards, including multifamily rental housing, removal of constraints to housing for lower income households and persons with disabilities and energy conservation policies, State housing element law is a model for promoting development patterns that can achieve multiple public objectives including housing, transportation, environmental and economic equity and access.

State Review of Local Housing Elements

Another important feature of State housing element law, is the requirement for State review of local housing elements for compliance with the statutory requirements of Government Code Section 65580-65589.3 This is a unique component of State planning law, as no other element of a local general plan is mandated to be reviewed by a State agency

Housing element law and HCDs review of local elements continue to be a unique and essential tool in planning for the State’s housing needs as well as broader public

² Government Code Section 65580-65589.8 at: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65580-65589.8>

objectives. For example, statutory requirements and HCD’s review result in local governments adopting programs to encourage development for a variety of housing types including households with extremely low incomes and persons with disabilities and address regulatory constraints.

In the prior planning period (3rd planning period), California communities achieved a record high compliance rate of 80 percent and the compliance statistic indicate that the compliance rate is on track with this previous record rate for the current 4th planning period update. As of December 31, 2011, 70 percent of jurisdictions were found to comply with housing element law; an increase of 86 jurisdictions from the prior year. The Department anticipates this trend will continue and compliance rates could easily exceed the prior record high of 80 percent. For example, as of June 1 2012, the compliance rate was already 74 percent. In addition, compliance rates are particularly high for those jurisdictions adopting housing elements. As of June 1, 2012, of all adopted housing elements, 96 percent were found to comply with housing element law.

As seen in Table 3-2 below, the smaller, more rural jurisdictions which are State CDBG-eligible have consistently had a higher overall compliance rate than the State in its entirety. During the 3rd planning period, these 165 State CDBG-eligible jurisdictions had a compliance rate of 87% compared to the State rate of 82%. During the 2nd planning period the difference in compliance rates was even more significant – with 75% of State CDBG-eligible jurisdictions in compliance with State housing element law compared to 47% statewide.

Table 3-2
Housing Element Compliance Rates – 2nd, 3rd and 4th Planning Periods

| State CDBG-Eligible Jurisdictions | | | |
|-----------------------------------|---------------------------------|---------------------------------|---|
| | 2 nd planning period | 3 rd planning period | 4 th planning period (As of 12/31/2011) |
| IN compliance | 75% (123) | 87% (143) | 76% (125) |
| OUT of compliance | 25% (42) | 13% (22) | 24% (40) |
| All Jurisdictions | | | |
| IN compliance | 47% (254) | 82% (439) | 72% (386) |
| OUT of compliance | 53% (281) | 18% (98) | 28% (151) |

Beginning April 2013, housing elements for the 5th planning period for the San Diego Association of Governments (SANDAG) will be due. Between April 2013 and the end of 2014, 451 of the State’s 540 jurisdictions will be required to update their housing element. The remaining 89 jurisdictions will be due by the end of 2015. Due dates by COG for the forthcoming 5th planning period are available on the Department’s website at http://www.hcd.ca.gov/hpd/hrc/plan/he/he_due_dates_updated042412.pdf.

Common outcomes from HCD review include adoption of incentives and procedures to promote infill, lot consolidation, mixed-use and transit-oriented development through increased densities, modified zoning standards and streamlined permit processing. By encouraging development and addressing regulatory constraints, implementation of

effective housing elements accommodate California's growing population while effectively planning to address a variety of policy objectives from climate change and air quality to improving job/housing relationships and facilitating job creation, all while promoting fair housing and social equity. The following are a few highlights:

- *Increasing Higher Density Residential Capacity:* In California's fourth housing element planning cycle, 96 jurisdictions, as of December 31, 2011, have so far adopted programs to rezone or upzone sites. The purpose of these changes is to increase residential capacity, at higher densities, in their housing elements. These rezoning efforts will provide a total of 4,925 acres, at higher densities, to facilitate multifamily and mixed-use housing. This will provide a minimum capacity of 105,553 additional units, with a majority at minimum densities of 20 units per acre.

These commitments reinforce housing element law as one of the primary land-use and planning tools to promote sustainable and equitable development. Housing element law emphasizes the need to provide a variety of housing types and densities to address special housing needs and encourage equal housing opportunities for lower income households and households and families protected by state and federal fair housing requirements.

- *Removal of Regulatory Barriers to Housing Choice:* HCD review of local elements has resulted in many cities and counties removing or mitigating the impact of Conditional Use Permit requirements on multifamily housing and housing for special needs populations including persons with disabilities as well as strategies to mitigate regulatory barriers to the development of infill and transit-oriented housing. Examples of strategies include reduced parking standards, increased densities, facilitating lot consolidation, reduced fees, streamlined permit processing, and tiered environmental review.
- *Special Housing Needs:* Over 95 percent of jurisdictions with adopted housing elements committed to amend zoning to facilitate the development of emergency shelters. In addition, most zoning amendments also result in permitting transitional and supportive housing as a residential use. The lack of appropriate zoning for emergency shelters and transitional and supportive housing has historically been a substantial barrier to housing choice and opportunity. Through commitments to amend zoning to streamline approval procedures, housing element updates create tremendous opportunities to address the housing needs of homeless individuals and families and other vulnerable populations.

Further, the HCD's review of housing elements has resulted in additional local commitments to update zoning codes and establish procedures to better address the housing needs of persons with disabilities. Local program commitments range from ensuring local zoning reflects and accommodates a

range of family types to adopting reasonable accommodation procedures for persons with disabilities.

The value of housing element law was also recognized by the United Nations Committee on the Elimination of Racial Discrimination (CERD). The CERD is responsible for monitoring global compliance with the 1969 Convention on the Elimination of Racial Discrimination, an international treaty that has been ratified by the United States. In 2008, CERD singled out California Housing Element Law as a national model and an important step towards reducing discrimination. The report, released in March 2008, says “[t]he Committee also notes with satisfaction the *California Housing Element Law* of 1969, which requires each local jurisdiction to adopt a housing element in its general plan to meet the housing needs of all segments of the population, including low-income persons belonging to racial, ethnic and national minorities.” It made these findings after review of the U.S. report to the Committee under the International Convention on the Elimination of All Forms of Racial Discrimination.³

While the State review requirement of local housing elements promotes compliance with the law and implementation of effective programs and policies, it is also controversial with local governments. Over the years, however, the State has determined this review function is critical to promoting state housing goals. To address local objections to State review of local plans, among other things, the State has adopted numerous incentives to encourage and reward compliance with the law. Specifically, to incentivize and reward local governments that have adopted compliant and effective housing elements, several housing, community development and infrastructure funding programs include housing element compliance as a rating and ranking or threshold requirement. A complete listing of programs is available on the Department’s website at http://www.hcd.ca.gov/hpd/hrc/plan/he/loan_grant_hecompl011708.pdf.

³ *Concluding Observations*, UN CERD/C/USA/CO/6 (March 7, 2008) p. 2

Overview of State of California Departments Administering Housing Programs

The following is an overview of California State Agencies and Departments involved in implementing State housing laws, fair housing laws and housing finance programs, including a description of roles and responsibilities in enforcing and promoting fair housing practices to identify areas for improved coordination and monitoring.

California Department of Housing and Community Development (HCD)

The California Department of Housing and Community Development is California's principal housing agency and oversees statewide policies and programs to maintain and create affordable housing opportunities for lower-income workers and families and increasing housing supply for all Californians. HCD's four primary functions include:

- Advocating and supporting housing development for all Californians. HCD assist cities and counties to prepare and implement the housing element portions of General Plans. HCD also develops the periodic Statewide Housing Plan, and provides technical assistance and statistical data to the Governor, Legislature, local governments and the general public.
- Developing, administering and enforcing building, codes, manufactured housing standards and mobilehome park regulations. HCD works with industry and other governmental agencies to develop national model building codes for conventional and manufactured housing, and incorporates them into California's building standards to ensure the health and safety of California residents. HCD also protects California consumers by registering and titling mobilehomes, overseeing manufactured housing construction, licensing manufactured housing sales professionals and regulating mobilehome parks. In addition, HCD's Mobilehome Ombudsman program assists with questions or complaints pertaining to mobilehomes, including health and safety issues, maintenance issues and warranty issues.
- Administering State and federal housing and community development finance programs. HCD administers a variety of loan and grant programs for housing and community development. In order to meet the needs of extremely-low, very-low, low- and moderate-income households, the Department provides direct financial assistance to local housing development organizations, developers, and service providers through more than twenty programs. The awarded loans and



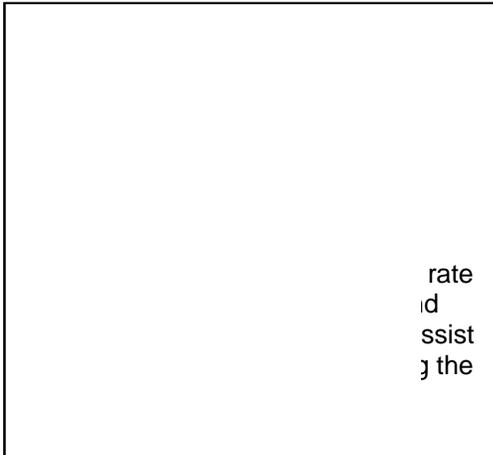
www.hcd.ca.gov

Mission: To provide leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. To administer, develop and advocate policies and laws to further housing and community development.

grants support the construction, acquisition, rehabilitation and preservation of affordable housing statewide, including affordable rental and ownership housing, homeless shelters, and transitional housing, public facilities and infrastructure. Loans and grants to local governments and private non-profit and for-profit housing developers leverage additional local public and private resources to increase California's housing supply and build sustainable communities.

- Compiling and disseminating critical information on housing, planning, financing and community and economic development issues. HCD's Housing Resource Center acquires and distributes information from within and outside HCD to local governments and other State agencies and officials, developers, non-profit organizations and the public. The Center maintains a library of books, reports, journals, newsletters and HCD publications on a variety of topics.

California Housing Finance Agency (CalHFA)



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The California Housing Finance Agency directly offers financial assistance to local government entities and individuals. These assistance programs foster a partnership between CalHFA and local public housing agencies to provide the financial resources to create and maintain innovative housing stock, resulting in the production of affordable housing units. Financial assistance is targeted toward first-time and low or moderate income homebuyers. Loan programs under the Homeownership Division provide low interest rate home financing, as well as assistance with down payment, and closing costs⁴. These

programs include the CalHFA FHA Loan program, Cal30 Conventional program, and the California Homebuyer's Down Payment Assistance program. The Agency administers the Keep Your Home California program to provide mortgage assistance to existing homeowners who are at risk of foreclosure. Keep Your Home California programs include the Unemployment Mortgage Assistance program, Principal Reduction program, and Mortgage Reinstatement program⁵. CalHFA also offers multifamily assistance for the acquisition, rehabilitation, and preservation or new construction of rental housing that includes affordable rents. However, the Multi-family program is temporarily suspended⁶.

⁴ California Housing Finance Agency. "First Time Homebuyers." Retrieved April 6, 2011 (<http://calhfa.ca.gov/homebuyer/index.htm>).

⁵ California Housing Finance Agency. "Keep Your Home California." Retrieved April 6, 2011. (<http://www.keepyourhomecalifornia.org/>).

⁶ California Housing Finance Agency. "Multifamily Developers/Managers." Retrieved April 6, 2011. (<http://calhfa.ca.gov/multifamily/index.htm>).

California Tax Credit Allocation Committee (TCAC)

The California Tax Credit Allocation Committee (“Committee” or “TCAC”) administers two low-income housing tax credit programs – a federal program and a state program. Both programs were authorized to encourage private investment in affordable rental housing for households meeting certain income requirements.



Congress created the federal Low Income Housing Tax Credit Program in 1986. It replaced traditional housing tax incentives, such as accelerated depreciation, with a tax credit that enables low-income housing sponsors and developers to raise project equity through the sale of tax benefits to investors. Two types of federal tax credits are available and are generally referred to as nine percent (9%) and four percent (4%) credits. These terms refer to the approximate percentage of a project’s “qualified basis” a taxpayer may deduct from their annual federal tax liability in each of ten years. Both programs were created to encourage private investment in affordable rental housing for households.

The program is regulated through Internal Revenue Code Section 42, and is administered by the Internal Revenue Service, which is part of the U.S. Treasury Department. Section 42 specifies that each state must designate a “housing credit agency” to administer the Credit program. In California, responsibility for administering the program was assigned to the California Tax Credit Allocation Committee (TCAC).

Recognizing the extremely high cost of developing housing in California, the State legislature authorized a State low income housing tax credit program to augment the federal tax credit program. Authorized by Chapter 1138, Statutes of 1987, the State credit is only available to a project which has previously received, or is concurrently receiving, an allocation of federal credits. Thus the State program does not stand alone, but instead, supplements the federal tax credit program. Only rental housing projects are eligible for tax credits in both the federal and State programs. Credits can be allocated to new construction projects or existing properties undergoing rehabilitation. Nine percent credits are allocated on a competitive basis so that those meeting the highest housing priorities and public policy objectives, as determined by the Committee, have first access to credits.

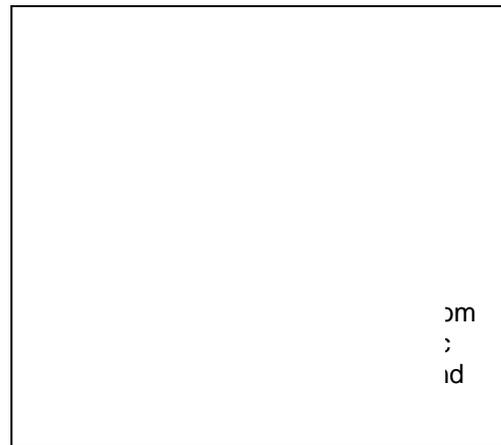
In California, the demand for housing tax credit is approximately three to one (3:1). As a result, many good, worthwhile projects are unable to be awarded credit. It also means a rather elaborate set of legal and regulatory rules for determining what projects are awarded credit has been established. State and federal law require at least 10% of the annual credit be awarded to projects that materially involve non-profits. State law also

requires 20% of the annual credit be awarded to projects located in rural areas of the State. Additionally, to assure geographic distribution of the tax credit, a certain percentage of credit is awarded each year to projects located in ten geographic regions of the State.

Public policies encouraging smart growth principles, energy efficiencies, and the like are part of California's housing tax credit program. In its competitive scoring system, points are awarded for a variety of items, ranging from serving lower income tenants, to achieving energy efficiencies, to the degree that the project will contribute to revitalization efforts in the area where it will be located.

California Department of Fair Employment and Housing (DFEH)

The Department of Fair Employment and Housing functions as the State's civil rights agency, charged with enforcing California's comprehensive employment, housing, public accommodations and public service non-discrimination laws, as well as the State's bias-related hate violence law. The Department has jurisdiction over individuals, private or public entities, housing providers, and business establishments within the State of California, including corporate entities, private sector contracts granted by the State of California, and all State departments and local governments. The Department investigates, conciliates and prosecutes discrimination complaints.



Fair employment, housing, and accommodation are pursued in accordance to the California Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act.⁷ In spite of state and federal legislation, discrimination in housing persists, necessitating vigorous enforcement of California's fair housing laws by the Department of Fair Employment and Housing and fair housing advocates throughout the state. Complaints are organized into the following three categories: 1) employment, public accommodation, and hate violence; 2) housing discrimination; and 3) systemic discrimination. DFEH also provides technical assistance to the general public by informing employers and housing providers of their responsibilities. All employers are required to post DFEH's "Discrimination and Harassment in Employment are Prohibited by Law" poster.

⁷ Department of Fair Employment and Housing. "About." Retrieved April 6, 2011 (<http://dfeh.ca.gov/About.htm>).

DFEH maintains eight regional offices throughout the State:

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| <p>Bakersfield 4800 Stockdale Highway, Suite 215 Bakersfield, CA 93309 (661) 395-2729</p> | <p>Los Angeles 1055 West 7th Street, Suite 1400 Los Angeles, CA 90017 (213) 439-6799</p> | <p>Fremont 39141 Civic Center Drive Suite 410 Fremont, CA 94538 (510) 789-1085</p> |
| <p>Fresno 1277 E. Alluvial Avenue, Suite 101 Fresno, CA 93720 (559) 244-4760</p> | <p>San Jose 2570 N. First Street, Suite 480 San Jose, CA 95131 (408) 325-0344</p> | <p>Elk Grove 2218 Kausen Drive Suite 100 Elk Grove, CA 95758 (916) 478-7251</p> |

The Department is a neutral fact-finding agency. Department staff conduct impartial investigations in which records are reviewed and relevant witnesses are interviewed. An investigation may be conducted on site and/or through telephone interviews. The Department has the authority to take depositions, issue subpoenas and interrogatories and seek Temporary Restraining Orders during the course of its investigation. All evidence gathered is analyzed to determine if a violation of the Fair Employment and Housing Act has occurred. In making its determination the Department considers evidence from both sides as well as from any neutral parties the Department may have contacted

DFEH administers a housing discrimination mediation program, which is the largest fair housing mediation program in the nation to be developed under HUD’s Partnership Initiative with state fair housing enforcement agencies. The program provides California’s tenants, landlords, and property owners and managers with a means of resolving housing discrimination cases in a fair, confidential, and cost-effective manner. Key features of the program are: 1) program is free of charge to the parties; and 2) mediation takes place within the first 30 days of the filing of the complaint, often avoiding the financial and emotional costs associated with a full DFEH investigation and potential litigation.

California Department of Veterans Affairs

California has the largest number of veterans in the nation with almost 2 million calling the Golden State home. With their families, they make better than 10 percent of the state’s total population. In support of California’s veterans and their families, the U.S. Department of Veterans Affairs (USDVA) invests more than \$6 billion in benefits and services within California. The California Department of Veterans Affairs (CalVet) oversees a home loan portfolio worth more than \$1.5 billion that has served more than 400,000 veterans and their families since it was started in 1923.



www.calvet.ca.gov

Mission: CalVet will deliver the innovative services veterans and their families need to be successful, productive Californians in the most efficient and cost effective manner through aggressively collaborating with key stakeholders and partners.

The administration of a variety of successful housing program for veterans and their families are administered through CalVet's Homes Division, the Farm and Home Loan Division, and the Veteran Services Division. Programs include:

- Department of Housing and Urban Development and the Department of Veterans Affairs Supported Housing (HUD-VASH) Program provides long-term case management, supportive services and permanent housing support.
- The Supportive Services for Veteran Families (SSVF) Program provides supportive services to very low-income Veterans and their families who are in or transitioning to permanent housing. Grants are awarded to private non-profit organizations and consumer cooperatives who will assist very low-income Veterans and their families by providing a range of supportive services designed to promote housing stability.
- CalVet Home Loan Program provides low interest rate farm and home loans for veterans, financing new and existing single-family homes, farms, condominiums and mobile homes on land owned by the veteran or in rental parks by acquiring property selected by the veteran and reselling the property to the veteran under a land sale contract. The Program has assisted over 417,000 veterans to purchase farms and homes throughout the State.
- California Veterans Homes provide California veterans with a living environment that protects their dignity and contributes to their feeling of self-reliance and self-worth. The Department operates the Veterans Homes of California in Yountville, Barstow and Chula Vista. California opened three new Veterans Home this past year in Lancaster, Ventura, West Los Angeles, and broke ground on two others one in Fresno, and one in Redding.

California Department of Mental Health (DMH)



CALIFORNIA DEPARTMENT OF
Mental Health
www.dmh.ca.gov

Mission: The California Department of Mental Health (DMH), entrusted with leadership of the California mental health system, ensures through partnerships the availability and accessibility of effective, efficient, culturally competent services. This is accomplished by advocacy, education, innovation, outreach, understanding, oversight, monitoring, quality improvement, and the provision of direct services.

The passage of Proposition 63 (now known as the Mental Health Services Act or MHSA) in November 2004, provided the first opportunity in many years for DMH to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, transition age youth, adults, older adults and families. The Act addresses a broad continuum of prevention, early intervention and service needs and the necessary infrastructure, technology and training elements that will effectively support this system. This Act imposes a 1% income tax on personal income in excess of \$1 million. Statewide, the Act was projected to

generate approximately \$254 million in fiscal year 2004-05, \$683 million in 2005-06 and increasing amounts thereafter. Much of the funding is provided directly to county mental health programs to fund programs consistent with their local plans.

In addition, DMH, CalHFA and the County Mental Health Directors Association established a new housing program under which \$400 million in Mental Health Services Act (MHSA) funds have been made available to finance the capital costs associated with development, acquisition, construction and/or rehabilitation of permanent supportive housing for individuals with mental illness and their families, especially including homeless individuals with mental illness and their families. The new program is called the MHSA Housing Program and funds for capitalized operating subsidies are included in the \$400 million that has been designated for the program. The single objective of the MHSA Housing Program is to create as many affordable housing units as possible across California by providing both capital and operating subsidy funding for the development of permanent supportive housing for individuals who experience mental illness and who are homeless or at risk of homelessness. Affordable housing, with necessary supportive services, is costly and poses challenges outside those typically associated with the development of affordable housing. The MHSA Program, however, has proven effective providing much needed gap financing and has approved loans to 45 developments totaling 1,919 units (559 MHSA units) since its inception and is actively assisting individuals in their recovery from chronic mental illness.

California Department of Community Services and Development (CSD)

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| <p>Department of Community Services and Development</p> <p>www.csd.ca.gov</p> <p>Mission: to assist low-income Californians in achieving self-sufficiency, and it plays a strategic role in promoting collaboration among state agencies that address the needs of the poor.</p> |
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Like the CDPH, CSD is one of twelve departments under the umbrella of the California Health and Human Services Agency. CSD partners with a network of private non-profit and public local community service providers dedicated to helping low-income families achieve and maintain self-sufficiency, meet their home energy needs and reside in housing free from the dangers of lead hazards. Through this network CSD administers California's federal funding share for the Community Services Block Grant (CSBG), Low-Income Home Energy Assistance Program (LIHEAP),

Weatherization Assistance Program (WAP) and the Lead-Based Paint Hazard Control Program (LEAD). All of these programs are offered to eligible low-to-moderate income Californians. Depending on the program, income eligibility ranges from 100 percent of federal poverty to 60 percent of the state's median income. A listing of CSD's contracted service provider network to locate organizations serving communities statewide visit <http://www.csd.ca.gov/Programs/Programs.aspx>

California Department of Consumer Affairs (DCA)



The Department of Consumer Affairs' regulates the marketplace by ensuring that business owners, practicing professionals, and landlords are held to a standard. The DCA's main function is to issue business and professional licenses. In respect to fair housing, the Department provides publications on tenant and landlords responsibilities regarding issues such as unlawful discrimination, having repairs made, moving out, refunds of security deposits, terminations and evictions, and the eviction

process. Specifically, DCA publishes "*California Tenants - A Guide to Residential Tenants' and Landlords' Rights and Responsibilities*" Handbook. The "California Tenants" handbook is a practical resource for both tenants and landlords and provides information about rental applications, unlawful discrimination, security deposits, repair responsibilities, rent increases, termination of leases, and eviction notices. A copy of the publication is available on DCA's website at <http://www.dca.ca.gov/publications/landlordbook/index.shtml>.