

# Housing for All:

## Western Center on Law & Poverty's Affordable Housing Manual

January 2017



Edited by

S. Lynn Martinez &

Madeline S. Howard

Made Possible With Support From

manatt

Bank of America



This Manual is for all housing advocates, grassroots organizers and community members who believe that clean, decent, safe and *available* affordable housing is a right for every human. After joining the legal services community in 1989, I was amazed at—and overwhelmed by—the number of planning and advocacy tools available to local advocates. I also was frustrated by the absence of a user-friendly compendium that would guide effective utilization of these tools. This Manual is the result of a long-term desire to provide an easy-to-understand, comprehensive approach to increasing the supply of affordable housing in our communities.

This Manual is fondly dedicated to the memory of Rev. David Burgess (1917–2008), co-founder of the Affordable Housing Affiliation–Benicia and housing advocate extraordinaire.

**Lynn Martinez**

Western Center on Law & Poverty

Co-Editor, January 2017

Defending tenants facing eviction in California's high opportunity areas is something like trying to catch a tidal wave with a teaspoon. You can prevent some evictions, but the lack of affordable housing means that even the wins are short-lived. With many low-income tenants paying more than half of their income towards rent, vulnerable families are always on the brink of displacement. I hope that this Manual will provide tools for advocates to make long-term, far reaching changes in their communities so that we can fulfill the goal of safe, integrated, affordable housing for all.

**Madeline Howard**

Western Center on Law & Poverty

Co-Editor, January 2017



## Acknowledgements

Western Center acknowledges with gratitude the generous in-kind support of **Manatt, Phelps & Phillips, LLP**, which made the development and publication of this Manual possible.

This Manual was also made possible by the generous financial support of the **Bank of America Foundation**.

Western Center also wishes to thank the following individuals for their tireless work on this Manual:

Catherine Bishop, Jean Blanchard, Craig Castellonet, Laura Chiera, Deborah Collins, Aleric Degrafinried, Nichol de Guzman, Navneet Grewal, Meghan Haswell, Marvin Katzoff, Michel Kim, Deanna Kitamura, Andrea Luquetta, Michael Moynagh, Michael Rawson, Richard Rothschild, Richard Schirtzer, Eric Shultheis, Jay Smith, Greg Spiegel, Mona Tawatao, Ryan Wells, and the great team at Manatt, Phelps & Phillips, LLP: David Elson, Robert Eller, Sue Shelton, Allen Riberdy, Max Gaertner, Tom Muller, Matthew Dombroski, Randall Keen, Susan Hori, Bryan LeRoy, Roger Grable, Scot Fishman and Alexis Wesley.

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this Manual is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Manual is not intended to be a substitute for independent legal research.

*Copyright © 2017 Western Center on Law & Poverty, All rights reserved. Permission is granted to copy and share this publication with LSC- and IOLTA-funded organizations. For other permissions, please contact us at [mhoward@wclp.org](mailto:mhoward@wclp.org).*

# Table of Contents

## Part I: Getting Started: The Advocates Role

<b>Chapter 1: Overview—Planning for Affordable Housing</b>	<b>1.1</b>
I. Why is it important to plan for affordable housing?	1.2
II. Why Use This Manual?	1.8
III. The Advocates' Role in Planning	1.12
A. Working with Community Organizations	1.13
B. Increasing Funding Opportunities	1.13
C. Ensuring Legal Compliance	1.13
 <b>Chapter 2: Local Government—The Players and Planning Process</b>	 <b>2.1</b>
I. Local Government: The Players	2.2
A. The Local "Planning" Agency	2.4
B. The Planning Commission	2.6
C. The City Council/Board of Supervisors	2.6
D. The Redevelopment Agency	2.7
E. The Housing Authority	2.9
II. Local Government: The Process	2.9
A. Agendas and Minutes	2.9
B. Staff Reports	2.10
C. Public Hearings	2.11

<b>Chapter 3: The Advocate's Role in the Planning Process</b>	<b>3.1</b>
I. Planning and How it Impacts Affordable Housing	3.2
A. The Benefits of Advocacy in the Planning Process	3.3
1. Advocacy can increase the supply of affordable housing	3.3
2. Advocacy brings local expertise to the planning process	3.3
3. Advocacy educates elected officials, government agency staffers, and community residents	3.4
4. Advocacy creates a record	3.4
5. Advocacy builds power for an organization or community	3.4
II. Overcoming Barriers to Advocate Participation	3.5
A. Calendar time for policy work	3.5
B. Find appropriate funds for policy work	3.5
C. Use this Manual	3.6
 <b>Chapter 4: Preparing for Successful Advocacy</b>	 <b>4.1</b>
Step I: Documenting the Demand for and Supply of Affordable Housing in the Community	4.2
A. Conducting an Affordable Housing Assessment	4.3
B. Evaluating the Need for Affordable Housing	4.3
Step II: Identifying the Plan and Responsible Agency	4.5
Step III: Understanding the Planning Process	4.6
A. Compile and Review the Planning Documents	4.7
B. Who are the Decision-Makers?	4.8
C. What Advocacy Strategy Will Influence the Decision-Makers?	4.8
1. Determining How to Influence the Decision-Maker	4.9
Step IV: Choosing Your Advocacy Strategies	4.10
A. Testimony at a Public Hearing or Meeting	4.11
1. Working With Stakeholders With Shared Self-Interests	4.11
2. Knowing What is on the Agenda	4.12
3. Getting Your Issue on the Agenda	4.12
4. Obtaining Minutes, Resolutions and Other Documents From Prior Meetings	4.12
5. Getting Copies of Documents Relevant to the Upcoming Meeting	4.13
6. Testifying for the Record	4.13
B. Direct Membership on Appointed or Elected Planning Bodies	4.15
C. Participate on a Working Group	4.15
D. Additional Strategies Outside the Formal Planning Process	4.16

<b>Chapter 5: Using the Census Bureau's Webpage: A Hands-On Guide</b>	<b>5.1</b>
I. The Bureau Website	5.3
II. Using Available Census Data	5.4
A. Steps to Access Census Block and Census Tract Data	5.4
B. Other Data Sources	5.7
III. Third-Party Mapping Applications	5.7
A. Mapping Applications	5.8
B. Secondary Sources	5.9
 <b>Chapter 6: Public Access to Government Documents</b>	 <b>6.1</b>
I. Purpose	6.2
A. The Freedom of Information Act	6.2
1. Entities Subject to the FOIA	6.6
B. The California Public Records Act	6.7
C. Entities Subject to the CPRA	6.10
D. Effective Use of FOIA and the CPRA	6.10
1. General Research	6.10
2. Pre-litigation Research	6.11
3. A Supplement to Discovery	6.11
4. Using FOIA and the CPRA	6.11
5. Agency Fees for Compliance with FOIA and CPRA Requests	6.14
E. Dealing with Public Records Problems	6.15
1. Informal Techniques	6.15
2. Litigation	6.16

## Part II: California's Affordable Housing Plans

<b>Chapter 7: Housing Element Law</b>	<b>7.1</b>
I. What is Housing Element Law?	7.2
II. Housing Element Law is Useful for Advocates	7.3
III. The Housing Element is a Mandatory Element of the General Plan	7.4
IV. The Housing Element Revision Process	7.5
A. Deadlines to Revise the Housing Element	7.7
B. Contents of the Housing Element	7.7
1. An Analysis of Existing and Projected Housing Needs	7.7
2. A Site-Specific Land Inventory	7.7
3. An analysis of governmental constraints to residential development for all incomes	7.8
4. A program to identify adequate sites	7.9
5. A program to make sites available for lower income housing "by right"	7.9
6. A program to zone sites to accommodate any lower income RHNA not accounted for in the prior planning period	7.9
7. A Program to "address, and where appropriate and legally possible, remove government constraints" to affordable housing	7.9
8. Programs to conserve and preserve existing private market and subsidized affordable housing	7.10
C. HCD Review and Advocacy	7.12
D. Annual Reporting	7.14
V. Enforcement	7.14
VI. Related Legal Tools	7.15
<b>Chapter 8: Redevelopment Plans</b> <i>(coming soon)</i>	<b>8.1</b>
<b>Chapter 9: Relocation Plans</b> <i>(coming soon)</i>	<b>9.1</b>

## Part III: The Federal Planning Documents

<b>Chapter 10: Overview of Federal Planning Programs</b>	<b>10.1</b>
I. Purpose	10.2
II. Overview of Federal Housing Programs	10.3
<b>Chapter 11: Consolidated Plan</b>	<b>11.1</b>
I. History	11.2
II. Legal Overview	11.2
III. Federal Dollars in Your Community: Funds Included in the Con Plan	11.4
A. HOME: The HOME Investment Partnerships Program	11.4
1. Who are the HOME players?	11.5
2. What Can HOME Funds Be Used For?	11.6
B. Housing Trust Fund (HTF)	11.8
C. Community Development Block Grant (CDBG)	11.9
1. Who are the players?	11.10
2. What Can CDBG Be Used For?	11.12
a. All Eligible Activities Must Meet the CDBG "National Objectives"	11.12
b. Eligible Activities	11.12
D. The Emergency Solutions Grants Program	11.13
1. Who are the players?	11.14
2. What Can ESG Funds Be Used For?	11.14
E. Housing Opportunities for People with AIDS (HOPWA)	11.15
1. Who are the players?	11.15
2. What Can HOPWA Funds Be Used For?	11.16
a. Used to Prevent Homelessness and Provide Supportive Services	11.16
b. Eligible Activities	11.16
IV. California's Fiscal Year 2016 Allocations	11.17
V. The Framework of the Consolidated Plan	11.17
A. Public Participation	11.18
1. Citizen Consultation	11.19
2. Citizen Participation Plan	11.21
B. The Draft Con Plan	11.22
1. Housing Needs in the Community	11.22
2. Homelessness	11.23
3. Other Special Needs	11.24



4. Domestic Violence Issues	11.24
5. Lead Based Paint	11.24
6. Housing Market Analysis	11.25
a. Subsidized Units	11.25
b. Public Housing	11.25
c. Special Need Facilities and Services	11.26
7. Barriers to Affordable Housing	11.26
C. The Strategic Plan	11.29
D. The Annual Action Plan	11.31
E. Certifications and Sub-Plans	11.32
F. The Final Consolidated Plan	11.33
G. Con Plan Amendments	11.33
H. Consolidated Annual Performance Evaluation Report (CAPER)	11.34
 <b>Chapter 12: Public Housing Authority Plans</b>	 <b>12.1</b>
I. Introduction to Public Housing Plans	12.2
A. Overview and Purpose	12.2
B. Legal Overview and Structure of the Plan Process	12.3
II. Five-Year and Annual Plans	12.5
A. Five-Year Plan	12.5
B. Annual Plan	12.5
III. Program Specific Plans	12.7
A. Section 8 Administrative Plan	12.7
B. Public Housing Admission and Continued Occupancy Plan (ACOP)	12.8
C. Plan for Designation of Public Housing for Elderly and Disabled	12.10
IV. Plans to Demolish, Revitalize and Privatize Public Housing	12.11
A. Demolition and Disposition	12.11
B. HOPE VI	12.13
C. Rental Assistance Demonstration	12.13
V. The Family Self Sufficiency Action Plan	12.15
 <b>Chapter 13: Section 3 Plans</b>	 <b>13.1</b>
I. Purpose	13.2
II. Responsibilities of the Recipient	13.3
III. Current Issues in the Section 3 Program: HUD's Proposed Rule	13.4

<b>Chapter 14: Homelessness Plans</b> <i>(coming soon)</i>	<b>14.1</b>
--	-------------

<b>Chapter 15: Assessment of Fair Housing</b> <i>(coming soon)</i>	<b>15.1</b>
--	-------------

## Part IV: Appendices

Appendix A:	Local Housing Analysis	A.1
Appendix B:	Sources of Housing Data and Analyses	B.1
Appendix C:	Conducting a "Power Analysis"	C.1
Appendix D:	Tips for Conducting Private Meetings with Decision-Makers	D.1
Appendix E:	Sample Community Benefits Agreement	E.1
Appendix F:	Sample Public Records Requests	F.1
Appendix G:	Sample Public Comment Letter on Housing Element	G.1
Appendix H:	Sample Citizen Participation Plan	H.1
Appendix I:	HUD's Consolidated Plan Checklist (Entitlement Jurisdictions)	I.1
Appendix J:	HUD's Consolidated Annual Performance and Evaluation Report (CAPER) Checklist	J.1
Appendix K:	Annual Plan Checklist	K.1
Appendix L:	Sample Comment Letter on Administrative Plan and Admissions and Continued Occupancy Policy	L.1
Appendix M:	Public Housing Authority Plan Timeline	M.1
Appendix N:	Housing and Land Use Glossary	N.1

# Chapter 1: Overview—Planning for Affordable Housing

# Overview—Planning for Affordable Housing

## I. Why is it important to plan for affordable housing?

**Low-income people in California are in desperate need of affordable housing.** During the past decade, the cost of housing skyrocketed in California and many people, primarily higher income homeowners, landlords, and residential and commercial developers, benefited from the real estate boom.<sup>1</sup> At the same time, many more Californians are forced to choose between paying their rent or mortgage and purchasing food and clothing for their children.<sup>2</sup> In many instances, other necessities, such as health care, insurance and high-quality child care are not an option for these families.

Each year, dedicated legal services and affordable housing advocates fight to keep thousands of low-income Californians in their housing. Yet, the number of people in need of affordable housing continues to grow. We must do more to *plan* for the development of new housing for our clients. This manual is intended to encourage advocates to become involved in the affordable housing planning process.

### **The current statistics are grim:**

**Wage earners cannot earn enough to pay their rent.** Low-income families and individuals who are unable to secure decent, affordable, and suitable housing may need to severely limit their spending on food and other critical necessities. In 2012, severely cost-burdened low-income households spent an average of 39% less on food and 65% less on healthcare compared to

---

<sup>1</sup> “Spurred by low home values, high rents, and limited competition from owner occupants, large institutional investors bought more than 200,000 homes as rentals in 2012 and 2013.” Joint Center for Housing Studies of Harvard University, *The State of the Nation’s Housing* at 29 (2014). [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-full.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-full.pdf). LAO Report, *California’s High Housing Costs Causes and Consequences* at 10 (2015). <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>. “On top of the 100,000 to 140,000 housing units California is expected to build each year, the state would have to build as many as 100,000 additional units annually—almost exclusively in its coastal communities—to seriously mitigate its problems with housing affordability” *Id.* at 4.

<sup>2</sup> According to the U.S. Conference of Mayors *Hunger and Homelessness Survey*, emergency food assistance requests increased by an average of 7% from 2013–2014. *The U.S. Conference of Mayors 2014 Status Report on Hunger & Homelessness* at 1. <http://usmayors.org/pressreleases/uploads/2014/1211-report-hh.pdf>.

otherwise similar households living in affordable housing.<sup>3</sup> The struggle to pay high housing costs also forces the lowest-income families to move often, disrupting their daily routines and social networks. In 2011, among extremely low-income renters, 43% had moved into their current homes within the previous two years.<sup>4</sup>

**Rents are increasing, and wages are not keeping up.** In 2015, the average rent for a two bedroom apartment in California was \$1,386 (ranging from \$741 in Trinity County to \$2,062 in San Francisco) while the average income for a renter was \$18.96 an hour. Workers must earn \$26.64 per hour, assuming a 40-hour work week for 52 weeks per year, in order to afford market rate housing.<sup>5</sup> As a result, many single-parent families with children are unable to afford adequate housing. Other families are forced to double-up, risking eviction for living in overcrowded homes in violation of their leases. In 2012 there were 7.4 million people who were living doubled-up with family or friends.<sup>6</sup>

It is even worse for the 50% of renters earning less than the California median income. With the state minimum wage at \$10.50 per hour, the wage earner must work 91 hours per week or hold 2.5 full-time jobs to afford a two bedroom apartment with a rent of \$1,386, the average fair market rent for California.<sup>7</sup>

People receiving government benefits fare even worse. In California, a person with disabilities receiving Supplemental Security Income (SSI) is paid \$889.40 per month.<sup>8</sup> The average rent in California is over \$1000 per month.<sup>9</sup> However, a person receiving SSI can only afford to pay

---

<sup>3</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* at 29 (2014). [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-full.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-full.pdf). According to the U.S. Department of Housing and Urban Development, a family is “cost burdened” when the amount the family pays for housing, including utilities, exceeds 30% of the family’s gross income.

<sup>4</sup> *Id.*

<sup>5</sup> See National Low Income Housing Coalition, *Out of Reach 2015* at 3. [http://nlihc.org/sites/default/files/oor/OOR\\_2015\\_FULL.pdf](http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf). Other sources report even higher average rents of \$3460 for a one-bedroom apartment in San Francisco. <https://www.zumper.com/blog/2015/03/san-francisco-rent-prices-continue-rapid-rise-february>.

<sup>6</sup> National Law Center on Homelessness & Poverty, *Homelessness in America: Overview of Data and Causes* at 2. [http://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet).

<sup>7</sup> The \$10.50 minimum wage will go into effect January 1, 2017. Under legislation enacted in 2016, the state minimum wage will increase gradually over the next 6 years, up to \$15/hour in 2022. Even at \$15/hour, a person would have to work 64 hours a week to earn enough to afford rent of \$1386, and rent will likely go up.

<sup>8</sup> <http://www.ssa.gov/oact/cola/SSI.html>.

<sup>9</sup> 2014 USC Casden Multifamily Forecast at 7. <https://lusk.usc.edu/sites/default/files/2014-USC-Casden-Multifamily-Forecast.pdf>. “Los Angeles County had the highest average rent in 2014Q2, at \$1,716, followed by Orange County at \$1,663, San Diego at \$1,498, and the Inland Empire at \$1,134.”

\$266.82 per month, including utilities.<sup>10</sup> Without affordable housing, people relying on public benefits are faced with impossible choices.

More than a third of U.S. households live in housing that exceeds their means.<sup>11</sup> Nationwide, 28% of renter households pay more than half their income for housing<sup>12</sup> and there are only 3.3 million affordable and available housing units for the 11.5 million low-income households who need them.<sup>13</sup> Almost 1.6 million low-income Californians pay more than *half* their income for rent.<sup>14</sup>

### **Homelessness disproportionately impacts certain populations.**

Homelessness does not impact all populations equally. Family and child homelessness has been increasing since the mid-1980s and in 2014; homeless families with children constituted 37% of the overall homeless population.<sup>15</sup> Since public benefit and wage levels have not kept up with housing costs, family homelessness is expected to increase.<sup>16</sup> According to HUD's 2015 count, which does not include doubled-up families; demographics include:

---

<sup>10</sup> *Id.* Housing costs are affordable if rent, utilities and related expenses do not exceed 30% of the household's monthly income. National Low Income Housing Coalition, *Out of Reach 2015* at 2. [http://nlihc.org/sites/default/files/oor/OOR\\_2015\\_FULL.pdf](http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf). "Affordability in this report is consistent with the federal standard that no more than 30% of a household's gross income should be spent on rent and utilities." See also Health and Safety Code §50053 (defining "affordable rent" for extremely low, very low, and low income households.)

<sup>11</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* at 1 (2014). [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-full.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-full.pdf).

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 30.

<sup>14</sup> California Budget and Policy Priorities, *How housing vouchers can help address California's rental crisis*. Available at: <http://www.cbpp.org/research/housing/how-housing-vouchers-can-help-address-californias-rental-crisis>.

<sup>15</sup> Lisa K. Foster & Patricia Snowden, California Research Bureau, *Addressing Long-Term Homelessness: Permanent Supportive Housing* 1–2 (August 2003). The statistics on homelessness are varied, depending on whether the count includes sheltered homeless, people living on the streets or those labeled as the "chronic homeless." See discussion in Chapter 15. See also Urban Institute *et al.*, *Strategies for Reducing Chronic Street Homelessness* xiv (January 2004). Chronic homelessness is defined as someone who is "disabled and has been continuously homeless for a year or more or having had at least four homeless episodes during the last three years . . . . Disabilities or disabling conditions often include severe and persistent mental illness, severe and persistent alcohol and/or drug abuse problems, and HIV/AIDS." <https://www.hudexchange.info/resource/4832/2015-ahar-part-1-pit-estimates-of-homelessness/>, *The 2015 Annual Homeless Assessment Report (AHAR) to Congress*. Also supported by the United States Interagency Council on Homelessness. <https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf>.

<sup>16</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* at 31 (2014). [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-full.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-full.pdf).

- 23% of all homeless people were children under the age of 18, and another 9% are youth between the ages of 18 and 24;<sup>17</sup>
- 40% of homeless people are African-American;<sup>18</sup>
- 11% of all homeless people were veterans;<sup>19</sup>
- 15% of all homeless adults were survivors of domestic violence.<sup>20</sup>

### California's homeless population

In 2015, over one-third of the nation's chronically homeless population lived in California.<sup>21</sup> A recent study revealed that up to 12% of students at California State Universities lack a stable place to sleep.<sup>22</sup> Data from two California counties illustrate the demographics of the homeless population and the unmet need for resources.

In Los Angeles, 24,464 people were experiencing homelessness on a single night in 2016, an increase of 11% from the previous year.<sup>23</sup> The unsheltered homeless population increased by 21%.<sup>24</sup> African-Americans made up 39% of the homeless population, but only 9% of the general population in Los Angeles County in 2016. Many people experiencing homelessness have special needs; among homeless adults, 30% are severely mentally ill, 20% are physically disabled, 16% are veterans, 18% are victims of domestic violence or other physical abuse, and 3% are HIV positive."<sup>25</sup>

San Francisco's 2015 Point-in-Time Count<sup>26</sup> recorded 7,539 homeless people, and increase of 2% from the 2013 count.<sup>27</sup> Approximately 58% of all individuals counted in 2013 could not access shelter.<sup>28</sup> Eleven percent of the homeless population in San Francisco is employed.<sup>29</sup> Among

---

<sup>17</sup> <https://www.hudexchange.info/resource/4832/2015-ahar-part-1-pit-estimates-of-homelessness/>, The 2015 Annual Homeless Assessment Report (AHAR) to Congress.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Homelessness in America: Overview of Data and Causes.*

[http://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet). *Homelessness in America.*

<http://nationalhomeless.org/about-homelessness>.

<sup>21</sup> <https://www.hudexchange.info/resource/4832/2015-ahar-part-1-pit-estimates-of-homelessness/>, The 2015 Annual Homeless Assessment Report (AHAR) to Congress.

<sup>22</sup> Rashida Crutchfield, *Serving Displaced and Food Insecure Students in the CSU*, January 2016. Available at: <https://presspage-production-content.s3.amazonaws.com/uploads/1487/cohomelessstudy.pdf?10000>.

<sup>23</sup> Los Angeles Homeless Services Authority, *2016 Homeless Count Results, Los Angeles County and LA Continuum of Care* (May 10, 2016) available at: <https://www.lahsa.org/homeless-count/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Chapter 15 for a discussion of the Point in Time Count.

<sup>27</sup> 2015 San Francisco Homeless Point-in-Time Count & Survey Comprehensive Report, <http://sfgov.org/lhcb/2015-san-francisco-point-time-homeless-count-0>.

<sup>28</sup> *Id.*

homeless adults in San Francisco, many have special housing needs; 35% are severely mentally ill, 28% are physically disabled, 14% are veterans, and 7% are HIV positive.<sup>30</sup> Nearly half of families with children reported having experienced domestic violence.<sup>31</sup>

**Tens of thousands of California homeowners and tenants face foreclosure.** Former homeowners and tenants have faced homelessness since the foreclosure crisis hit in 2008. After the housing market plummeted, the U.S. lost \$7 trillion in home equity, leading millions of homeowners owing far more than their home's worth and dramatically increasing the rate of foreclosure.<sup>32</sup> Lower-income and minority homeowners have fallen prey to risky lending practices and predatory “reverse-redlining” lending schemes.<sup>33</sup> “Reverse redlining, where mortgage brokers flood a minority neighborhood with exploitative products, has devastated communities of color.”<sup>34</sup> Products like “balloon” mortgages led borrowers with low incomes to lose their homes when mortgage payments skyrocketed to unaffordable levels. People of color were targeted for these types of mortgages; African-American borrowers were twice as likely to receive predatory loans as similarly-qualified white borrowers.<sup>35</sup>

Tenants in foreclosed properties also suffered when the corporate entities that acquired their homes through foreclosure ignored the tenant's rights under laws passed to protect them from summary eviction.<sup>36</sup> Tenants who were paying rent on time and had no knowledge of the impending foreclosure found themselves locked out of the homes where they lived for years or evicted on very short notice.<sup>37</sup> Despite federal and state laws requiring post-foreclosure owners to honor tenants' leases and provide notice before eviction, tenants continued to be forced from their homes after foreclosure.<sup>38</sup>

---

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 85.

<sup>31</sup> *Id.*

<sup>32</sup> Mail Tribune, “Soaring rents, stagnant wages create housing crisis,” posted May 3, 2015, [www.mailtribune.com/article/20150503/NEWS/150509979/101064/NEWS](http://www.mailtribune.com/article/20150503/NEWS/150509979/101064/NEWS).

<sup>33</sup> See California Budget Project, *Locked out 2008: The Housing Boom and Beyond* (February 2008). See also ACORN: Overview of the Foreclosure Campaign, <http://acorn.org/index.php?id=12067>.

<sup>34</sup> *City of Los Angeles v. Wells Fargo & Co.*, 22 F. Supp. 3d 1047, 1051 (C.D. Cal. 2014).

<sup>35</sup> *Id.*

<sup>36</sup> The Protecting Tenants at Foreclosure Act (PTFA) was enacted in 2009 and sunset in December 2015 (12 U.S.C. §5220 note; Pub. L. No. 111–22, tit. VII, §702, 123 Stat. 1632, 1660–62 (2009), as amended by Pub. L. No. 111–203, tit. XIV, §1484 (2010)(§702)); See also Code Civ. Proc. §1161b and *Nativi v. Deutsche Bank et al.*, 223 Cal. App. 4th 261, 284–285 (2014) (*petition for review and depublication request denied* April 30, 2014).

<sup>37</sup> National Law Center on Homelessness and Poverty, *Eviction without notice* at 13–14, <http://www.nlchp.org/reports>.

<sup>38</sup> *Id.* at 8.



While foreclosure numbers finally began slowing in 2015, bank repossessions are still high<sup>39</sup> and racial disparities persist. In 2011–12, the volume of loans extended to African-Americans increased by 5%, and to Hispanics by 7%. At the same time, lending to whites and Asians increased by 15%. Hispanics and African-Americans were also much more likely to have their loan application rejected and to be issued subprime loans.<sup>40</sup> The denial rate for conventional purchase mortgages was 25% among Hispanics and 40% among African-Americans, two or three times the rate among whites.<sup>41</sup>

### **The statistics are grim. How do housing advocates address the housing needs of lower-income people?**

As advocates, we promote the development and preservation of affordable housing in a number of ways. For instance, advocates help fight unjust evictions and discrimination. We access community resources and help individuals find housing. As advocates for our clients we attend hearings, trials and informal meetings. We work long hours to keep our clients housed, often in under-paid positions.

However, there is also a different but complimentary systemic approach that we can take to obtain affordable housing for our clients or constituents. This approach involves proactively advocating and planning for housing at the local government level. The legal structure for this advocacy and planning approach already exists in California. It has been built by expert affordable housing advocates over the past five decades. State and local jurisdictions are governed by a regulatory scheme designed to promote new affordable housing. These laws are also used to protect against the loss of affordable housing and to ensure that lower-income people live in decent, safe and sanitary housing.

---

<sup>39</sup> RealtyTrac, *Nearly 1.1 million U.S. Properties with Foreclosure Filings in 2015, Down 3 Percent from 2014 to Nine-Year Low*, posted January 12, 2016, <http://www.realtytrac.com/news/foreclosure-trends/realtytrac-2015-year-end-u-s-foreclosure-market-report/>.

<sup>40</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* at 20 (2014), [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14\\_txt\\_bw-full.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14_txt_bw-full.pdf); The Prospect, *Them That's Got Shall Get*, Nathalie Baptiste, posted October 4, 2014, <http://prospect.org/article/staggering-loss-black-wealth-due-subprime-scandal-continues-unabated>. The Federal Deposit Insurance Corporation and the Department of the Treasury define subprime loans only in reference to borrower characteristics, and define subprime borrowers as those with certain negative credit history. See FDCI Come-In Background Definition at: <https://www.fdic.gov/about/comein/background.html>. These definitions are not useful in examining racially discriminatory mortgage lending practices. Subprime loans generally refer to loans with terms that are unfavorable to the borrower, including Adjustable Rate Mortgages (ARM) where interest levels skyrocket after an initial fixed rate period and loans with higher fees and large prepayment penalties. See Dept. of the Treasury, *Joint Statement on Subprime Lending*, 72 F.R. 131 (July 10, 2007).

<sup>41</sup> *Id.*

In addition, there are millions of dollars flowing into our cities and counties each year—*money that would not be there but for the low-income community!* It is incumbent on local jurisdictions to plan how this money will be spent so as to provide housing and employment opportunities for the lower-income community. Since lower-income people are intended to be the beneficiaries of this money, advocates must make sure that it benefits the people and their communities directly. This takes planning.

Each year, millions of dollars flow into our cities and counties dedicated solely to affordable housing and community development activities.

Did you know that California cities and counties must:

- include housing for extremely low-income people, and homeless shelters for anyone in need, when planning for housing in the community?<sup>42</sup>
- spend state and federal money that they receive to benefit low-income people, the homeless or people with disabilities, including people with HIV/AIDS?<sup>43</sup>
- make sure that there is enough land available to build affordable housing?<sup>44</sup>
- pay up to 5 years of rent subsidies, no matter what the final cost, to compensate people who are displaced by public action or the use of government money, even if displaced by a private entity?<sup>45</sup>
- replace low-income housing units that are destroyed?<sup>46</sup>
- make sure that affordable housing *remains* affordable for lower income households for as long as 55 years?<sup>47</sup>

Some of these requirements apply to every jurisdiction; other obligations attach to specific sources of funding. However, one thing is constant: cities and counties *must* plan for affordable housing in their communities.

## II. Why Use This Manual?

This manual is intended to encourage advocates to become involved in the affordable housing planning process. The planning process allows advocates to help ensure that communities are developing housing that is affordable for their clients—and that affordable housing is constructed and maintained in accordance with certain minimum quality thresholds. By

This manual is intended to encourage advocates to become involved in the affordable housing planning process.

<sup>42</sup> Housing Element Law, Chapter 7.

<sup>43</sup> Redevelopment Law, Chapter 8 and Consolidated Planning, Chapter 11.

<sup>44</sup> Housing Element Law, Chapter 7.

<sup>45</sup> State and federal relocation laws, Chapter 9.

<sup>46</sup> Redevelopment Law, Chapter 8. *See also* Federal relocation laws, Chapter 9.

<sup>47</sup> Redevelopment Law, Chapter 8.

engaging in the planning process, we can make sure that California builds thousands of affordable housing units over the next decade and that the people who need that housing get to live in it.

This manual covers some of the major *local* affordable housing planning laws. Part I provides an overview of the planning process and insight into how local governments work. It explains the importance of advocacy and how to be a successful advocate. Part I also describes the different agencies and public bodies that are found in our communities. It explains the public notice and meeting requirements and how to access government records. It details how to find data to support the case for affordable housing and how to present the case to the relevant government officials. It explores general strategies in approaching the local planning staff and legislative body to advocate for increased affordable housing opportunities.

As detailed below, Parts II (California Planning) and III (Federal Planning) of the manual offer an in-depth review of the major local plans that should be used to promote the development of affordable housing on the local level. It explains the purpose of each law and the history behind the planning process. It delves into the contents of the different local plans and explains the technical aspects of the law. It describes how advocates can get involved and, depending on the community, what should be asked for during the planning process. The manual also explains the importance of implementation, since a plan is worth only the paper on which it is written until actually executed by the community leaders.

Perhaps most importantly, Parts II and III describe the public participation requirements of each plan. As acknowledged by Congress, the State Legislature and local public bodies, the key to every successful plan is strong public participation. This manual outlines what the local government must do to encourage local housing advocates and the rest of the public to participate in the planning process for each plan.

### **Part II covers the following California plans:**

**The Housing Element:** Every city and county in the state of California must adopt a housing element on a regular schedule, ranging from 4 to 8 years. As part of the General Plan, the housing element is the main planning document for the development, preservation and rehabilitation of housing. Cities are required to plan for the housing needs of residents at each income level, including very low-income households. It identifies what types of housing are available, if the existing housing is affordable, and the diversity in the community in need of affordable housing. Housing element law requires local jurisdictions to assess the need for affordable housing and to identify available vacant land on which the housing can be built. Finally, the local law may require jurisdictions to adopt discretionary programs, such as inclusionary

housing requirements, and other affordable housing-creation mechanisms, and implement those programs to meet local affordable housing needs, including emergency shelter needs for the homeless population.

**Redevelopment Law:** In 2012, community redevelopment agencies dissolved but many affordable housing obligations remain intact. Among other things, these obligations include money designated for affordable housing and the requirement to replace housing units lost due to redevelopment activities. Redevelopment plans and state-generated reports contain important information about the outstanding affordable housing obligations that still exist in many jurisdictions.

**Relocation Plans:** As community revitalization occurs and gentrification takes place, lower income households may be displaced. Federal, state and local relocation laws are designed to protect lower income families from displacement. If the loss of housing is inevitable, those same laws serve to ensure that displaced households continue to have access to affordable housing for a specific amount of time. Relocation laws are triggered in a variety of ways: when the local government purchases their home, when redevelopment is used to demolish buildings, or when non-profit developers evict poor people to build alternative affordable housing. The relocation plan is the mechanism for providing proper notice to displaced households and the public. It further ensures that local government will proceed in accordance with the various relocation laws.

### **Part III begins with an overview of the Department of Housing and Urban Development (HUD) and further covers the federal affordable housing plans, including:**

**The Consolidated Plan:** The Consolidated Plan is the major federal planning document for cities and urban counties receiving funds from five major federal Housing and Urban Development (HUD) programs: HOME, National Housing Trust Fund, Community Development Block Grant (CDBG), Emergency Solutions Grants (ESG) and Housing Opportunities for People with HIV/AIDS (HOPWA). Each year these entitlement jurisdictions receive millions of federal dollars for housing and community development, housing assistance and services for the homeless and for people with HIV/AIDS. The state also receives an allocation of these funds that it then awards, through a competitive bidding process, to smaller “non-entitlement” jurisdictions. Adopted every five years, the Consolidated Plan comprises the jurisdiction’s application for federal funds and its plan for how those funds will be spent. Therefore, the receipt of these HUD program funds is conditioned on preparation of the Consolidated Plan and allocation of the funds is governed by the Plan. The jurisdiction must also adopt “action” and “performance” reports every year, describing specific implementation actions for the upcoming year and reporting how its plan was implemented, and its federal funds spent, during the past year.

**Public Housing Plans:** Public Housing Agencies (PHAs) administer conventional public housing for lower income households as well as the Housing Choice Voucher program. The PHA planning process includes both a Five Year Plan and an Annual Plan that are submitted to, and approved by, HUD. The plans are developed with the assistance of residents and the public and incorporate basic PHA policies and rules regarding the local public housing operation, program and services. PHAs are also required to adopt Administrative Plans for the Housing Choice Voucher program and admission and occupancy plans, among other matters.

**Section 3:** When certain HUD funds are received by Public Housing Agencies, cities, counties or other government agencies, Section 3 obligations are tied to those funds. The Section 3 program is designed to provide job training, employment and contracting opportunities for lower income residents in connection with projects and activities in their neighborhoods. Recipients of the HUD funds must prepare a Section 3 Plan and submit reports on their ongoing implementation of the program.

**Continuum of Care:** This plan is often a companion to the Consolidated Plan. To encourage service providers to coordinate with each other, HUD requires that each community submit a single application for McKinney-Vento Homeless funds. Unlike the Emergency Shelter Grant funds received through the Consolidated Plan process, the McKinney-Vento Act funds are issued on a competitive basis through the Continuum of Care application process. Ideally, the Continuum of Care serves to coordinate government agencies, homeless service providers and advocates for the effective administration of the housing designed to bring people out of homelessness: the *continuum* of transitional, supportive services and permanent housing programs.

**Assessment of Fair Housing:** Every jurisdiction receiving HUD funding must prepare an Assessment of Fair Housing. Through the Assessment, the local jurisdiction examines fair housing impediments that are prevalent in its community. These may include zoning restrictions, racial discrimination or neighborhood opposition to low-income housing. HUD provides access to mapping tools to facilitate an in-depth analysis of these issues. Once identified, the local jurisdiction must then develop a plan to eliminate these impediments to “affirmatively further fair housing.”

Finally, Part IV of the manual incorporates an advocate’s toolkit designed to guide the advocate through a successful process. This section includes checklists used by government agencies to determine the adequacy of submitted plans and provides sample comment letters that can be used by advocates.

While this manual covers the most important housing-related plans drafted and adopted by local governments, it does not cover all affordable housing plans. For example, the manual focuses on the requirements of local government, but does not cover plans that are prepared by the state or federal government. Moreover, this manual focuses only on local plans that are mandatory under state or federal law. Although it is commendable when local governments adopt voluntary planning mechanisms to promote more affordable housing for their citizens, including local rent control programs, the purpose of this manual is to educate advocates about the available *legal hooks* under mandatory planning requirements. Finally, while this manual does not cover all relevant affordable housing plans, the importance of the other plans is noted when relevant and, if applicable, advocacy resources are provided to obtain more information.

Successful planning can result in:

- **Producing** new decent, safe and sanitary affordable housing;
- **Preserving** the existing stock of affordable housing and making sure that those units are habitable; and
- **Protecting** the right of tenants to be free from housing discrimination, illegal eviction, retaliation and unsafe housing conditions.

### III. The Advocates' Role in Planning

Successful planning is a combination of producing, preserving and protecting affordable housing opportunities for lower-income residents in the community. There are many steps that housing advocates can take to ensure that their communities are successfully planning for the housing needs of their residents:

- Participate in public forums to advocate on behalf of our clients and constituents and other lower-income people;
- Coordinate with other advocates, community groups, non-profit developers, and other organizations engaged in similar efforts;
- Educate communities, including neighborhoods opposed to affordable housing, about the needs of lower-income residents;
- Monitor the actions of state and local government to ensure compliance with state and federal law; and
- Litigate on behalf of our clients, if necessary.

### **A. Working with Community Organizations**

Advocates can work with community organizations to ensure that the needs of low-income people are being recognized and adequately addressed. As plans are being developed, participation in working groups defining the special housing needs or current housing burdens in our community is crucial.

Working with non-profit developers of affordable housing can be invaluable. Often non-profit developers have insufficient cash flow to retain private law firms on a regular basis. We can assist with incorporation documents or drafting by-laws, sit on boards of directors (if permitted), support proposed development with informal advocacy at public hearings, and provide legal assistance to the non-profit organization as our client.

In addition, we can bring other service providers together to demand opportunities for our clients. When developing plans, local governments should invite members of the low-income community, local homeless services providers and food pantries, fair housing agencies, welfare departments, non-profit organizations, affordable housing developers, churches, health clinics, legal services providers, and grass-roots housing advocacy organizations, and others to the table. These organizations are the most knowledgeable about the issues confronting the low-income community and their expertise is essential to ensure full community representation. If the locality fails to engage these entities, and demands to be included fail, it is even more imperative for advocates to attend the meetings and use their attendance as an opportunity to educate the community about public participation.

### **B. Increasing Funding Opportunities**

Often the localities will overlook sources of funding that are available to support affordable housing. By understanding the different planning tools and the funding programs available on the federal, state and local level, including public and private sources, we can bring increased opportunities to actually implement local affordable housing plans. In addition to the funding sources described in this manual, funds may be available from private foundations, local businesses and churches. Non-profit organizations may be in a stronger position, with local government support, to seek funding opportunities to promote affordable housing development or preservation.

### **C. Ensuring Legal Compliance**

Advocates can ensure that local governments meet their legal obligations to promote, encourage and assist in the development of affordable housing. In some cases, local governments may be

unaware of increased requirements or statutory changes without participation of housing advocates. At other times, local governments may choose to ignore the housing needs of the lower-income community or the legal requirements imposed by planning laws. When housing advocates and attorneys submit written comments and make oral presentations at public meetings about the government's lack of legal compliance, localities are more inclined to reevaluate their actions to avoid negative publicity and possible litigation.

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).



## Chapter 2: Local Government—The Players and Planning Process

### I. Local Government: The Players

In order to effectively influence the planning process, it is important for housing advocates to understand the specific powers given to local jurisdictions and which of these powers are preempted by state law. Each city and county has constitutional “police powers” to protect the health, safety and welfare of its residents.<sup>1</sup> However, local government discretion is limited by state and federal law. The Constitution expressly confers police powers but only to the extent that any local law or ordinance does not conflict with general laws of the state.<sup>2</sup> Federal laws forbidding housing discrimination based on race, gender and other protected categories further constrain local discretion.<sup>3</sup>

What does this mean? It means that a locality can adopt its own municipal code comprising its own local law. However, the locality may only work *within* the statutory framework provided by the state Legislature when adopting its code or subsequent ordinances, or taking land use actions. There are a variety of state laws that impact the land use and zoning powers of local governments, such as the state housing element law.

In California, most cities are incorporated under the laws of the state. These cities are referred to as “general law” cities, and they are subject to all constraints imposed by state laws, including those applicable to local or municipal affairs.<sup>4</sup> Other cities, referred to as “charter cities,” or “home rule” jurisdictions, are organized under a city charter that has been adopted by the voters.<sup>5</sup> Unless otherwise declared by statute, charter cities are only subject to preemptive state laws that are matters of “statewide concern.” (See Box 1). Advocates can determine whether their local government is a “general law” or “charter” community by checking the Municipal Code. Most jurisdictions now post their local Code on the internet. Local codes are also available at the city offices or community libraries.

<sup>1</sup> *Berman v. Parker*, 348 U.S. 26, 32–33 (1954); Cal. Const. Art. XI, §7 (declaring that a “county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”).

<sup>2</sup> *Id.*

<sup>3</sup> Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, 42 U.S.C. 3601 *et seq.* and other federal laws forbid discrimination against various protected groups. See Chapter 16.

<sup>4</sup> Gov’t Code §34102.

<sup>5</sup> *Id.* §§34101, 34457.

## Chapter 2—Box 1

### What are charter cities or counties?

A charter jurisdiction has more independence than a general law jurisdiction. Unless a charter jurisdiction has expressly stated that it will follow the general law in its charter, such jurisdictions may enact local laws that conflict with state law unless the subject has been established as a “matter of statewide concern.”<sup>6</sup> In these cases, the charter city or county is required to follow state law. For example, a charter jurisdiction must comply with General Plan and Housing Element law,<sup>7</sup> the Mello (coastal zone) Act<sup>8</sup> and other provisions of California’s Planning and Zoning Law.<sup>9</sup> In addition, charter counties enjoy less independence than charter cities.

Currently, there are 121 charter cities in California,<sup>10</sup> as follows:

Adelanto	Glendale	Oroville	Sand City
Alameda	Grass Valley	Pacific Grove	Santa Ana
Albany	Hayward	Palm Desert	Santa Barbara
Alhambra	Huntington Beach	Palm Springs	Santa Clara
Anaheim	Indian Wells	Palo Alto	Santa Cruz
Arcadia	Industry	Pasadena	Santa Maria
Bakersfield	Inglewood	Petaluma	Santa Monica
Berkeley	Irvine	Piedmont	Santa Rosa
Big Bear Lake	Irwindale	Placentia	Santee
Buena Park	King City	Pomona	Seal Beach
Burbank	Kingsburg	Port Hueneme	Shafter
Carlsbad	Lancaster	Porterville	Signal Hill
Cerritos	La Quinta	Rancho Mirage	Solvang
Chico	Lemoore	Redondo Beach	Stockton
Chula Vista	Lindsay	Redwood City	Sunnyvale
Compton	Loma Linda	Richmond	Temple City
Culver City	Long Beach	Riverside	Torrance
Cypress	Los Alamitos	Roseville	Truckee
Del Mar	Los Angeles	Sacramento	Tulare
Desert Hot Springs	Marina	Salinas	Vallejo
Dinuba	Marysville	San Bernardino	Ventura
Downey	Merced	San Diego	Vernon
El Cajon	Modesto	San Francisco	Victorville
El Centro	Monterey	San Jose	Visalia
Eureka	Mountain View	San Leandro	Vista
Exeter	Napa	San Luis Obispo	Watsonville
Folsom	Needles	San Marcos	Whittier
Fortuna	Newport Beach	San Mateo	Woodlake
Fresno	Norco	San Rafael	
Gilroy	Oakland	San Ramon	

In addition, there are 14 charter counties in California: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara and Tehama.<sup>11</sup>

<sup>6</sup> *Id.* §34101; *Santa Monica v. Grubb*, 245 Cal.App.2d 718, 723 (1966).

<sup>7</sup> Gov. Code §65300 *et seq.*; See Chapter 7.

<sup>8</sup> *Id.* §65590 *et seq.*

<sup>9</sup> *Id.* §65000 *et seq.*

<sup>10</sup> League of California Cities, *List of Charter Cities available at* <http://www.cacities.org/Resources/Charter-Cities>.

### A. The Local “Planning” Agency

Each city and county has a “planning agency” responsible for preparing and implementing land use planning documents for the city.<sup>12</sup> The legislative body of the city or county may delegate these responsibilities to the planning department, other administrative departments, a hearing officer, or various commissions.<sup>13</sup> Larger cities may have several departments that participate in the drafting of local plans. Advocates should familiarize themselves with the structure of their local government and determine which departments are responsible for developing each plan addressed in this manual. The examples provided in Box 2 may be helpful in determining the appropriate departments.

Your advocacy will be more effective if you get to know the appropriate planning staff. Planning staff works directly with the Planning Commission(s), and the City Council or Board of Supervisors.<sup>14</sup> Planning staff are usually involved in the development of affordable housing plans and can be a helpful resource for advocates. Staff can also advise if there are relevant committees, such as design or historical committees, which may be useful for advocacy.

Many localities post the plans discussed in this manual on their websites. The plans should also be available for review at the library and for purchase at city hall or the county offices. Some plans, such as the Consolidated Plan, must be provided to lower-income residents without charge.

Many localities post affordable housing plans on their websites.

---

<sup>11</sup> See <http://www.counties.org/general-information/county-structure-0>.

<sup>12</sup> Gov't Code §§65100, 65103.

<sup>13</sup> *Id.* §65100.

<sup>14</sup> The city council or county board of supervisors is commonly referred to as the “legislative body.” See, e.g., Gov't Code §34000. (“As used in this title, ‘legislative body’ means board of trustees, city council, or other governing body of a city.”)

## Chapter 2—Box 2

If you cannot locate a particular plan, contact the City or County Clerk. The clerk should be able to provide the plan or give direction to the appropriate department to obtain it.

Local Plan:	Department that may generate the Plan:
Housing Element	Planning Agency/Department Housing Agency/Department Office of Housing Housing and Redevelopment Division Office of Community Development
Relocation Plans	Planning/Housing Agency/Department Redevelopment Department Public Works Transportation
Consolidated Plan	Planning/Housing Agency/Department Office of Economic Development Office of Community Development
Section 3 Plan	Public Housing Agency Planning/Housing Agency/Department Office of Economic Development Office of Community Development
Continuum of Care	See Consolidated Plan
Fair Housing Plans	See Consolidated Plan Public Housing Agency
Public Housing Agency Plans	Public Housing Agency Office of Community Development

## **B. The Planning Commission**

Planning commissions are an optional part of local government.<sup>15</sup> A planning commission is made up of five or more citizens, usually appointed by the city council, mayor, or the chair of the county board of supervisors.<sup>16</sup> If the city or county has a planning commission, a plan will usually go before the planning commission for public hearing as a first step to adoption.

A planning commission is optional, made up of five or more appointed citizens.

The planning commission meets regularly to consider certain land use matters, holds public hearings, and may participate in the drafting, implementation and annual review of the General Plan or other community plans.<sup>17</sup> Depending on the local ordinance, the planning commission may also make recommendations for action to the city council or board of supervisors. For example, the planning commission might recommend that the city council approve a general plan amendment or zone change for a particular project. In some cases, if the planning commission approves or disapproves an application, that determination is final unless the applicant appeals the denial to the city council. However, regardless of the powers conferred by the local municipal code, the planning commission is limited by state law to overseeing and hearing certain matters.

Where it exists, the planning commission will probably play an active role in the development of most plans discussed in this manual. Often the planning agency and commission are charged with conducting study sessions and workshops to gather public input for the development of community plans. Usually the first opportunity for advocates to make verbal and written comments on the record is when the draft plan is presented for public hearing before the planning commission. The planning commission is subject to the open meeting laws under the state Brown Act, as discussed in Chapter 4, Section IV(A)(2).

## **C. The City Council/Board of Supervisors**

After the planning commission has taken action, the proposed action or plan will go to the legislative body.<sup>18</sup> As the legislative body, the city council

The city council or board of supervisors has final decision making authority.

---

<sup>15</sup> Gov't Code §65101.

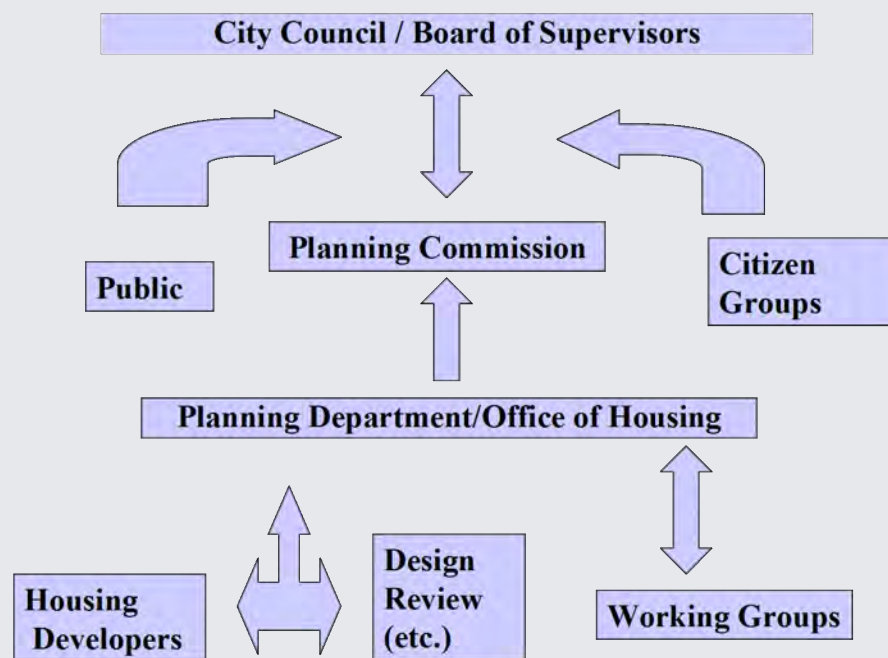
<sup>16</sup> *Id.* Provision for appointing the planning commission should be delineated by City or County ordinance. "The legislative body shall specify the membership of the commission or commissions."

<sup>17</sup> *See, e.g., id.* §§65103 (general powers), 65353 (power to hold hearings on General Plan and amendments thereto), 65402 (obligations to implement general plan), 65854 (hearings on zoning and amendments) and 66452.1 (tentative map approval).

<sup>18</sup> *See generally*, Gov't Code §§36801 *et seq.*

or board of supervisors has final decisionmaking authority. Advocates should review the legislative body's agenda and staff report to see what changes, if any, are being made from the planning commission level to the city council/board of supervisors. Regardless of changes, advocates should make both verbal and written comments at public hearings of both the planning commission and city council/board of supervisors. These comments serve to (1) alert the public body about any deficiencies in the plan; (2) educate the community (especially neighbors in opposition to affordable housing) about the needs of low-income fellow citizens, and (3) preserve any claims in the event that litigation is contemplated.

### Chapter 2—Box 3



### D. The Redevelopment Agency

California's Community Redevelopment Law was critical in facilitating much needed affordable housing. Local redevelopment agencies contracted with non-profits and other groups to revitalize communities and develop housing. However, as part of the 2011–12 Budget Act, the Legislature approved the dissolution of California's 400-plus redevelopment agencies (RDAs).<sup>19</sup>

<sup>19</sup> The Dissolution Law, often referred to as AB 26, is codified at Health & Safety Code §§34600 *et seq.* The Community Redevelopment Law remains codified in §§33000 *et seq.*

Before the dissolution, local RDAs were created and governed by state law to eradicate “blight” in predominately urban areas and promote the development of affordable housing.<sup>20</sup> After the dissolution, RDAs were replaced by successor agencies charged with closing down the redevelopment project areas and maintaining housing assets.<sup>21</sup> Notably, the Dissolution Law did not dissolve the existing obligations of redevelopment agencies.<sup>22</sup> Among other things, enforceable obligations include pre-existing debt, judgments and legally binding agreements and contracts that do not violate the redevelopment project debt limit or public policy.<sup>23</sup> Significantly, payments still owing to the former Low and Moderate Income Housing Fund still must be paid into a *new* Low and Moderate Income Housing Asset Fund and spent in accordance with the affordable housing provisions under the Community Redevelopment Law.<sup>24</sup>

In order to pay these obligations with property tax revenue, successor agencies must include them on annual Recognized Obligation Payment Schedule (ROPS) submitted and approved by the State Department of Finance.<sup>25</sup> However, the Department of Finance has repeatedly refused to approve enforceable obligations related to affordable housing, impairing local efforts to develop affordable housing and necessitating multiple lawsuits.<sup>26</sup> Issues regarding the dissolution of redevelopment agencies are currently being litigated, and the law is evolving in this area.

---

<sup>20</sup> For a general review, see *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure*, Economic Market Analysis Working Paper Series, [http://www.huduser.org/portal/publications/Redevelopment\\_WhitePaper.pdf](http://www.huduser.org/portal/publications/Redevelopment_WhitePaper.pdf).

<sup>21</sup> Health & Safety Code §§34173, 34176, 34176.1. For information regarding post-dissolution monitoring of affordable housing compliance, see *Practice Tip: Housing Obligations Survive the Dissolution of Redevelopment Agencies*, (November 2016), available at <http://wclp.org/>.

<sup>22</sup> §§34175(a), 34177(a); *California Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231, 251, 262–263 (2011) (Successor agencies are required “to continue to make payments and perform existing obligations”).

<sup>23</sup> See §34171(d)(1); *County of Sonoma v. Cohen*, 235 Cal.App.4th 42, 49 (2015) (explaining how certain of the *sponsor-former redevelopment agency* agreements were allowed to remain in effect as enforceable obligations).

<sup>24</sup> §§34171(d)(1)(G), 34176(d), 34176.1.

<sup>25</sup> §34177(a), (l) (1); See e.g., California Department of Finance, ROPS 16–17, Review Letters Issued by Finance, [http://www.dof.ca.gov/Programs/Redevelopment/ROPS/16-17\\_Letters/](http://www.dof.ca.gov/Programs/Redevelopment/ROPS/16-17_Letters/).

<sup>26</sup> See e.g., *Covarrubias v. Cohen*, 3 Cal.App.5th 1229 (2016), petition for review pending (filed November 17, 2016).



### **E. The Housing Authority**

Public Housing Agencies (PHAs), or “Housing Authorities,” are also governed by state law.<sup>27</sup> Housing authorities run conventional public housing and the local Housing Choice Voucher program (formerly called and often still referred to as Section 8). Housing Authorities must comply with the federal laws that govern these programs.<sup>28</sup> Advocates should become familiar with the territory served by their housing authority and its public meeting schedule.

Housing authorities run conventional public housing and the local Section 8 voucher program.

Housing authorities are subject to the California Public Records Act and the open meeting laws under the Brown Act. Housing authorities must also follow HUD guidelines for conducting public meetings and ensuring that public housing and voucher residents hold the required number of seats on the PHA board. Advocates should obtain copies of the Housing Authority calendar and attend meetings to enforce the rights of their subsidized housing clients.

## **II. Local Government: The Process**

Usually, a housing plan will go through several processes over a number of years, beginning with its original creation through final adoption. When engaging in the pre-adoption political process, advocates must consider a variety of factors to determine the proper course for their clients or constituents. These issues are fully discussed in Chapter 4.

When a plan is ready for consideration and final adoption, planning staff will usually bring it forward to the Planning Commission by placing it on the agenda for a public hearing. Notice of the hearing must be provided within the statutory time period by posting hearing agendas in a public place.<sup>29</sup> Depending on the plan, additional public notice, such as publication in newspapers or in additional languages, may be required.

### **A. Agendas and Minutes**

Advocates should regularly check public meeting agendas to determine whether there is a need for public input on any relevant matter. Agendas are usually posted online and at city hall or county offices and may be obtained directly from the city clerk or planning department. If agendas are not available online, consider providing the planning department with self-addressed,

<sup>27</sup> Health & Safety Code §§34200 *et seq.*

<sup>28</sup> 42 U.S.C.A. §1437C-1; For more information regarding public housing authorities, please visit <http://portal.hud.gov/hudportal/HUD>.

<sup>29</sup> Gov't Code §54954.2 (72 hours before a regular meeting). *Id.* at §54956 (24 hours for special meeting). These public notice laws were amended in 2011 to include a requirement that the agenda be posted on the local agency's website if the legislative body meets certain standards.

stamped envelopes for mailing.<sup>30</sup> Usually, agendas are available on the local government website and advocates should calendar an agenda review prior to each public meeting.

The public may speak on any agenda item listed under public hearings.<sup>31</sup> The agenda may include a “consent calendar,” listing a number of items that will not be discussed or considered individually. If a member of the public desires to speak on an item listed under the consent calendar, she must request that the item be pulled from the consent calendar and opened for public comment. Alternatively, a legislative member may request that an item be removed from the consent calendar for discussion. Unless a specific item is pulled, the entire consent calendar is subject to approval by the legislative body in a single inclusive vote.

The minutes of the public hearing are usually available in written form<sup>32</sup> and may be available on tape. Any person has the right to record the proceedings on her own initiative by either video or audio tape.<sup>33</sup> Often, public hearings are shown on local television, allowing the sessions to be recorded at home or office. Written minutes, or taped sessions, may also be available on the internet. Advocates should download and file all relevant agendas and minutes for future use, especially if litigation is anticipated for which public data may be needed.

### **B. Staff Reports**

Planning staff usually create a staff report to the planning commission, city council, or board of supervisors when placing an action or plan on a public hearing agenda. The staff report usually summarizes the project and makes a recommendation to the public body for approval or rejection. This report, together with all of its attachments, is a public document subject to the Public Records Act.<sup>34</sup> Because the staff report may contain information that may not be readily available to the public, and because it may contain the planning staff’s recommendation for action taken on the project, including proposed findings by the public body, advocates should make sure to obtain a copy *prior* to the public hearing. The staff report is usually available 2 or 3 days before

---

<sup>30</sup> *Id.* §54954.1. Advocates who cannot find agendas online should check if their legislative body is required to post agendas on its website. The agenda must be posted on the agency’s website if the legislative body meets either the standards set out in section 54954.2(d)(1) or (d)(2). Section (d)(1) references the definition of a legislative body found in §54952(a) where a legislative body is “[t]he governing body of a local agency or any other local body created by state or federal statute.” Section (d)(2) references the definition of a legislative body found in §54952(b) which includes commissions, committees, boards, or other body of a local agency created by a charter, ordinance, resolution or formal action of a legislative body.

<sup>31</sup> *Id.* §54954.3.

<sup>32</sup> *Id.* §54957.5.

<sup>33</sup> *Id.* §54953.5.

<sup>34</sup> *Id.* §54957.5. Advocates should attempt to obtain the staff report informally without having to invoke the statutory Public Records Act.

the hearing. Often, advocates can obtain a copy of the report on the internet but if not, the report should be available upon request from the city/county clerk or planning department.

### **C. Public Hearings**

After the Planning Commission has taken action, the proposed action or plan will usually go to the final local decision-making body: the City Council or Board of Supervisors. Once the final decision is made, the action can only be overturned by a court of law. When challenging a government planning action, there are various procedural issues that advocates must be aware of, including different statutes of limitation.<sup>35</sup> For example, and as explained in Chapter 7, housing element law is unique in that advocates can trigger the statute of limitations by sending a letter to the local government advising of any deficiencies in the housing element.<sup>36</sup> Moreover, some government planning actions provide an appeal process that can or must be invoked before further challenge is made. In most instances, however, advocates are required to exhaust their administrative remedies before filing a lawsuit, so if litigation is planned against a local decision or there is a possibility of litigation, advocates need to present comments before or at the public hearing.

Finally, as discussed more fully in Chapter 4, advocates should submit comments to both the planning commission and the city council or board of supervisors. Comments should be submitted in writing to the city or county clerk before the public hearing and made verbally at the hearing. Submitting comments is critical, because failure to raise an issue during the public process may result in a waiver of claims. Chapter 4 also provides advocacy tips for making successful comments at public hearings, and sample comment letters are included in Part IV.

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

---

<sup>35</sup> See, e.g., Health & Safety Code §33500 (statute of limitation for challenging actions by successor of former redevelopment agency); Gov't Code §65009(d) (statute of limitations for challenging Housing Element).

<sup>36</sup> Gov't Code §65009(d).

## Chapter 3: The Advocate's Role in the Planning Process

### I. Planning and How it Impacts Affordable Housing

If more housing, better housing, or different housing is needed in your community, chances are there is a planning process to realize these goals. "Planning" generally covers a variety of short and long-term plans that help to determine the future of a community. As discussed in Chapter 1, there are several government plans that address affordable housing.

California's current housing stock has been shaped by our traditional planning schemes. The affordable housing crisis of today stems in part from a zoning legacy that created and enforced racial and economic segregation, that under-represented the needs of low-income people, and that discouraged the construction of low-income and affordable multifamily housing. While current planning laws are no longer expressed in the explicitly racist terms that were common in the last century, exclusionary patterns persist in many jurisdictions. As a result, there is not enough affordable housing for low-income individuals and families and much of the existing affordable housing is segregated.

California's current housing stock is shaped by our traditional planning schemes.

Today's plans often facilitate profitable development and land speculation. This is partly the result of a planning process that is controlled by those whose primary goal is to profit from development. To change developer-driven development, low-income people and their advocates must participate effectively in the planning process.

### **Advocacy Delivers Results**

Advocacy in the planning process can . . .

- Increase the supply of affordable housing;
- Bring local expertise and experience to planning process;
- Educate the public, elected officials and agencies about affordable housing issues;
- Create more balanced and equitable development patterns;
- Create a record for litigation/future advocacy; and
- Build power for your organization.

#### **A. The Benefits of Advocacy in the Planning Process**

##### **1. Advocacy can increase the supply of affordable housing**

Plans determine current and future housing needs, including the needs of special populations, and identify how necessary housing will be financed. Once approved, the plan becomes an obligation—the local government must attempt to meet the affordable housing needs cited in the plan. When plans understate or ignore the future demand for affordable housing, the local government has no mandate to provide the housing that is needed. When this happens, housing construction fails to keep pace with demand, vacancies decrease, rents increase, and the risk of homelessness rises.

When a plan accurately reflects housing needs, the local government may be more likely to pursue programs and policies that result in the construction of sufficient affordable housing. Advocates are then in a better position to ensure adequate housing is built. In addition to creating more housing, participation in the planning process can address jobs and public services for the community.

That is not to say that good plans always make for good implementation. A good plan is just writing on paper if there is no one working to make sure it is being implemented. Without a good plan as a starting point, however, the advocate's job becomes much tougher.

##### **2. Advocacy brings local expertise to the planning process**

Residents know what is going on in their neighborhood and often know what is needed in a way that planners or elected officials do not. Planners do not have the kind of intimate knowledge of a community that a person gets from living in it. Planners cannot benefit from residents' ideas if the

residents do not know how the planning process works or have the tools to participate in the process.

Community advocates can help bridge gaps between residents and planners. Advocates can facilitate resident participation by teaching about the planning process. Without resident advocacy, decisionmakers will depend upon government staff who may never fully consider affordable housing needs or the broad array of potential solutions.

### **3. Advocacy educates elected officials, government agency staffers, and community residents**

Through trainings, meetings, presentations and written comments, advocates can provide information to residents, planners, and elected officials that they might not otherwise hear. The audience may not always be ready to listen to housing advocates, but the planning process provides the opportunity for education.

### **4. Advocacy creates a record**

Participation helps create a record of the community's housing needs, the land available to address that need, the funds needed to develop the housing, and other essential facts. When advocates present data or maps at a hearing or in written comments, the data becomes part of the administrative record. The ultimate decisionmakers must take the record into account when making their final decision. By creating a supportive record during the planning process, advocates create the potential for successful litigation should the planning process result in a negative outcome.

### **5. Advocacy builds power for an organization or community**

Participation in the planning process will increase your organization's understanding of how public policy decisions are made. The experience helps to develop skills and knowledge that will increase the impact of future advocacy. Participation can help also to build relationships. It provides an opportunity to build trust and credibility with other organizations and with policy makers.

Participation can lead to increased visibility that can improve the organization's fundraising ability and clout. Increased visibility and improved relationships can also broaden the organization's constituency. In addition, participation can help the organization develop new leaders and energize old leaders. Finally, planning participation can build better understanding of how decisions are made, which enables advocates to influence those decisions.

## II. Overcoming Barriers to Advocate Participation

For advocates, the fastest route to burnout may be our attempt to solve too many problems. Advocates and advocacy organizations are a scarce resource and should be used only when and where most effective. By engaging in the planning process, advocates can use precious resources to positively impact large numbers of low-income households and the entire community.

While there are clear benefits to participating in the planning process, there are also barriers. Time is a major obstacle to participating in planning work. There will be lengthy documents to read, multiple hearings to attend, and research to conduct in addition to the regular workload of the organization. There may be prohibitions against using certain funding sources for policy work unless requested to do so by a client or a legislator. With careful internal planning and partnering, however, these barriers can be overcome to enable successful advocacy activities.

### A. Calendar time for policy work

Successful policy advocacy requires regular and consistent effort. However, even though such advocacy is important work, direct services may demand most of your time. To make sure that there is enough time to work on larger issues, schedule policy advocacy into your daily or weekly calendar. Alternatively, schedule at least one day a week for someone in the organization to work on policy issues, similar to scheduling case intake.

Successful policy advocacy requires regular and consistent effort.

### B. Find appropriate funds for policy work

Money may be another barrier to policy work. Some foundations only fund direct services and are reluctant to fund policy advocacy. Look to different sources to fund your work. Often it is just a question of how the advocacy is framed. Direct service work addresses the needs of one client at a time. Policy advocacy addresses the needs of many clients at one time. Policy advocacy often ensures that there are sufficient direct services for many clients.



**C. Use this Manual**

The final barrier to advocating in the planning process is a lack of knowledge about how to begin. How does the process work? Should I work on the issue? What information do I need to know? How do I get the information? Who should I work with? Which laws apply? That is the focus of the next chapter—what is necessary for successful advocacy.

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

## Chapter 4: Preparing for Successful Advocacy

This chapter sets out a checklist to help advocates plan an advocacy strategy to meet the community's affordable housing needs. It can be used in conjunction with Parts II and III of this manual, which provide detailed information about specific housing plans, including legal authority.

### **Step I: Documenting the Demand for and Supply of Affordable Housing in the Community**

There are many arguments advocates can use to support developing more and better affordable housing. For starters, the current supply of affordable housing does not meet the demand for affordable housing. Advocates can also argue that there is insufficient supply for a specific population, that affordable housing is inappropriately segregated by income or race or some other means, or that existing affordable housing is in poor condition. All of these arguments have the potential to influence the planning process, but they are mere allegations unless documented. You need evidence documenting the need for housing to support your advocacy.

Credibility is power that can result in more effective advocacy.

Evidence is also important because public-interest advocacy must be grounded in the needs of the community it seeks to serve. Advocates may make assumptions about the community's needs that are unfounded. Even well-intentioned advocacy based on erroneous assumptions can lead to outcomes that ultimately do not benefit the community. In contrast, a solid understanding of a community's housing needs gives credibility to advocacy. Armed with the facts, the advocate may be able to correct inaccurate assumptions that will inevitably be made by government or by affordable housing opponents. Credibility is power that can result in more effective advocacy. Therefore, advocacy for affordable housing should begin with an assessment of the community's affordable housing needs.

### **Advocacy Tip:**

*Advocating for Whose Interests?* When conducting policy advocacy, define for whom you are advocating. Defining the population focuses advocacy and helps advocates to evaluate whom to partner with and what strategies to use. Define your focus by the following factors:

- Geography
- Income Levels
- Identifying Characteristics
  - Age, race, gender, gender identity, families with children, people with disabilities, Limited English Proficient people, immigrants, etc.
- Other Criteria

### **A. Conducting an Affordable Housing Assessment**

An assessment describes what housing the community has and what housing the community needs. In addition, it analyzes the housing trends in the community—that is, how housing is changing over time. It's also helpful to compare your community to other communities and to the State as a whole to highlight disparities.

It may be beneficial to assess specific categories of information to facilitate comparisons between communities and neighborhoods; for example, advocates could categorize housing by whether it is owner or renter-occupied, the age of the housing, and income levels of the residents. Before starting the research, use the Local Housing Analysis in Appendix A to identify issues that are prevalent in the community. After these issues are identified, use the “Sources of Housing Data and Analyses” available in Appendix B to ascertain what sources may be available to define the problem. Many of these web sources will already have done some of the work.

### **B. Evaluating the Need for Affordable Housing**

Successful advocacy requires more than raw data. To translate the data into a representation of what the community needs, advocates must first evaluate the data. Compare the number of people in various categories to the number of housing units available for them to live in. Ask the following questions: (1) Are there enough multi-bedroom units for families? (2) Where do people live? (3) Is the community segregated by race, income, disability status or another category? (4) What are vacancy rates for various types of housing, and how do they compare to the rest of the State, and how do they compare to similar or adjacent areas? If vacancy rates are lower than

elsewhere or rents are higher than similar areas, it suggests there is insufficient housing to meet demand.

Identifying need is more than data analysis. Talk to people in the community who are knowledgeable about housing issues and get their opinions. Talk to people providing services to the homeless at shelters, food banks, or other agencies. People often can articulate what they need better than the data alone. There are many people who can inform your opinion about the community's need for affordable housing.

### **Advocacy Tip:**

Many people in the community can provide information about the local need for affordable housing. Consider talking to:

- Current residents and people in need of affordable housing, especially those with special needs:
  - People with physical or mental disabilities
  - Extremely low-income tenants
  - Low-income homeowners
  - People who are homeless
  - Farmworkers
  - Emancipated foster youth
  - Large families
  - Seniors
  - People re-entering the community after incarceration
- Community institutions whose members need affordable housing
  - Churches
  - Schools
  - Unions
  - Food Banks
  - Free or low-cost medical clinics
  - Community organizations
  - Affordable housing providers
  - For profit developers & management companies
  - Non-profit developers & management companies
  - Shelters (domestic violence, homeless, etc.)
  - Transitional and supportive housing providers
- Affordable housing advocates
  - Tenant organizers and leaders
  - Legal services attorneys
- Investors in affordable housing

A visual survey of the community is another way to identify housing issues. A visual survey involves simply walking through the community and looking at housing where it is located—or planned to be located. Non-profit developers can be especially helpful in assisting advocates to identify zoning, topographical and other issues that may affect the feasibility of affordable housing development or rehabilitation of existing housing. For example, land that is adjacent to industrial or commercial uses may not be properly zoned for housing or may pose health risks to potential residents. Housing that is remote from services and jobs will make it difficult for residents to succeed without access to reliable public transportation. Other factors may deter rehabilitation of existing housing, such as lead-based paint. Visual surveys also can be used to determine whether housing appears to be overcrowded, uninhabitable or in need of code enforcement.

### **Step II: Identifying the Plan and Responsible Agency**

Effective participation in the planning process requires an understanding of which plans affect the problems you want to address. Identify your opportunities and know what to do with them. First, determine which plan or plans need attention.

It often requires some digging to identify instances where a planning issue is negatively impacting the community. For instance, an advocate may have four clients who are being evicted from the same building. Through investigation, the advocate learns that the evictions are proceeding because the landlord plans to demolish the building and develop the land as a strip mall. The demolition and development may be part of the local government's plan to redevelop the area. By identifying this action as a city project, advocates can assert legal protections for their clients, such as relocation and priority for replacement affordable housing. Advocates may be able to stop the demolition if proper public participation and financial planning, monitoring and enforcement procedures were not followed. Advocates may want to work with others to advocate for an amendment to the plan that would protect existing housing in the area. Thus, advocates can use the plan and the planning process to achieve positive outcomes—but first, the plan must be identified.

The easiest way to identify the plan is to determine which government agency is involved. Go online to the city's website to review agendas for the planning commission and board of supervisors or city council meetings related to the location. Meeting notices related to development may be posted on a nearby telephone pole or in a library, or mailed to the advocate's office. These notices will tell you which agency is involved in the planning process. See Chapter 2, Box 2 for a list of agencies or bodies and the type of plans they may be involved in.

Once the lead agency—the agency with primary responsibility for the planning process—is identified, the lead agency's website can provide a wealth of information. Usually there is a calendar to show upcoming community meetings. Attending the meeting is a great way to find out what's going on with the project and who is involved. Submit written comments addressing the concerns of your client community. Ask a question during public comment, or get to know an agency staffer to gather information and obtain necessary documents, such as staff reports. These websites often have planning documents, agendas and meeting minutes. You can call the local agency office and ask if there is an ongoing planning project or an upcoming hearing or meeting.

Another way to learn of ongoing plans is to contact local elected representatives and speak to the staff person in charge of housing issues. Local elected officials may include:

- City councilperson
- County supervisor
- State assemblyperson
- State senator
- Neighborhood councilperson

### Step III: Understanding the Planning Process

Every plan has a process. Understanding the planning process helps advocates determine what steps already have been taken and what is coming up next. Locate the documents that need to be reviewed and determine how much time is needed to develop and implement an advocacy strategy. By knowing the steps in the planning process, advocates can identify advocacy opportunities—points where your involvement can make a difference in determining the outcome of the plan.

In drafting and adopting a plan, the formal public participation process could include:

- **Pre-drafting:** Planning agency may hold public meetings and workshops to get community input on what should go in the initial draft.
- **Draft review:** Planning agency may hold public meetings to solicit

While there are similarities in the processes for various plans, there are important differences in timing and deadlines. To determine which stage of the process the plan is in, review the Manual chapter that covers the type of plan being reviewed.<sup>1</sup>

---

<sup>1</sup> Part II of the Manual focuses on state planning processes; Chapter 7 discusses Housing Elements, which are part of the General Plan. Chapter 8 discusses Redevelopment and Chapter 9 discusses Relocation Plans. Part III of the Manual, Chapters 10-16, covers federal planning processes.

community input and feedback on an initial draft before it is submitted for the legally required public hearing process.

- **Public hearing:** Planning agency will hold formal public hearing(s) to receive oral and written comment on the draft.
- **Written comments:** These must be submitted prior to the published deadline.
- **Agency response to public comment:** Planning agency may revise drafts based on oral and written comments and:
  - Submit the revised draft for public comment; and/or
  - Propose another public hearing; or
  - Issue answers to specific oral and written comments.
- **Agency adopts final plan.**

### **A. Compile and Review the Planning Documents**

At most steps in the planning process, the planning agency produces various drafts, charts, maps and other documentation. Compile and review the existing documentation. To determine what documents might already exist in the planning process, review the Manual chapter that covers the type of plan being reviewed.

#### **Advocacy Tip:**

Where Can You Get Copies of Planning Documents?

- Obtain copies from planning agency staff
- View the planning agency's website
- Visit the local public library
- Contact the elected representative's office
- Contact other community members active in planning process
- Utilize the California Public Records Act or Freedom of Information Act

Getting copies of the documents may be the easy part. While not rocket science, planning documents can be a confusing mix of complex legal terms and excruciating detail. With no experience or access to objective, easily understandable sources of information, reviewing these plans can be frustrating. Below is a list of resources that can help you focus and orient your review of planning documents and your participation in the planning process.



## **B. Who are the Decision-Makers?**

Usually plans incorporate several public processes, including hearings before advisory bodies that may not have actual power to decide whether to implement the plan. After that process, the plan is presented to the decision-making bodies that have approval or veto power over the plan. Moreover, plans that authorize development may require zoning changes or variances that require a separate process to implement. Actual developments also may require zoning changes, environmental review, variances or permits. All these steps have hearing processes and must be approved by decision-making bodies. Decision-making bodies could include:

- City council
- County board of supervisors
- Planning commission
- Zoning board
- Successors to Redevelopment Agencies
- Housing authority
- Project area committee

### **Who are the Decision-Makers?**

To determine which bodies have decision-making authority, review the Manual chapter that covers the type of plan you are interested in.

At first glance, it appears that the decision-makers have all of the power. They are the people who adopt and amend the plan and formulate how it will be implemented. However, the power of the decision-makers is confined to that which is given by law. Therefore, the people with the ability to enforce the law, legal services advocates, housing attorneys and advocates, developers, and residents and resident coalitions, are in a powerful position to stop the adoption, amendment or implementation of an illegal plan.

Decision-makers can be influenced by grassroots advocacy or threat of litigation. It may be faster to work with the decision-makers to adopt an amendment to the plan than to file a lawsuit seeking a court order in order to later force the amendment after winning a lawsuit. Accordingly, it is imperative for advocates to analyze and become engaged with the power structure of the decision-making body to achieve desired results.

## **C. What Advocacy Strategy Will Influence the Decision-Makers?**

The chosen advocacy strategies will depend upon:

- The results sought;
- The type of plan the advocate is trying to influence;
- The timing of the planning process; and
- The strategies most likely to influence the decision-makers.

### 1. Determining How to Influence the Decision-Maker

To choose which strategy is most likely to influence a decision-maker, advocates first must understand how the decision-maker can be influenced and what power exists to influence her. For purposes of this discussion, the decision-maker we seek to influence is called the “target.”

Usually, the law is the most powerful tool we can use to influence decision-makers.

Usually, the law is the most powerful tool we can use to influence decision-makers. The advocate must first determine whether the law supports the desired outcome. If the law supports your goal, it provides leverage in discussions with decision-makers. Regardless of whether legal action ultimately can be used to obtain the desired outcome, advocates should explore informal ways to achieve their goal; these avenues are often faster and allow for creative solutions to a complex problem.

In mapping out a strategy to achieve the desired outcome, the advocate must determine who has power over the decision-maker and how she can be influenced. This approach results in layers of targets. First, there is the primary target who makes the final decision, such as a city councilperson. Campaign donors and voters are likely to influence the councilperson. Well-financed community groups or business organizations may have sway over councilmembers and influence key planning decisions. The question then becomes, “Can I influence the people who influence the ultimate target?” As a result, we have multiple layers of targets.

- Primary target: Final decision-maker; person who can give you what you want
- Secondary target: Influences primary target and can help get what you want
- Tertiary target: Influences the secondary target

While this manual mainly focuses on legal compliance, it may be important to conduct a “power analysis” to determine whether your goals can be achieved through a faster political process.

There are many strategies used for influencing targets. To affect the primary target, advocates must understand the target's self-interests, and possibly the secondary and tertiary targets' self-interest. Most importantly, we must understand our own power to affect the target. While we can compel compliance with applicable laws, some organizations and advocates may also find it necessary to conduct a “power analysis” of the target's self-interests to be truly effective. The power analysis also may need to consider the interests of the secondary and tertiary targets. See Appendix C for more information about conducting a power analysis of potential targets.

### **Advocacy Tip:**

Determine what will influence your target. It may be a person, special interest group or a sincere desire to comply with the law. In addition, the media can be an important advocacy tool.

- **Elected officials** may consider:
  - Legal compliance and avoiding court orders
  - Potential campaign donors
  - Voters' interests
  - How their actions will be portrayed in the media
- **Government Agency officials** may be compelled by:
  - Legal compliance
  - Their bosses
  - Elected officials who oversee the agency
  - Public comments submitted to the agency
- **Housing developers** may be influenced by:
  - Investors
  - Funding sources and requisite legal requirements
  - Officials who approve or deny developments (elected bodies, planning commissions, agency directors)
  - People who can organize community support for, or opposition to, their developments

### **Step IV: Choosing Your Advocacy Strategies**

There are two phases of advocacy during the planning process: 1) plan drafting and adoption; and 2) plan implementation. Advocacy during the drafting and adoption phase seeks to ensure that the plan accurately addresses present and future affordable housing needs. The public hearing and comment process during drafting and planning provide opportunities for affordable housing advocacy.

Good plans by themselves, however, do not result in plentiful affordable housing. Good plans often are not implemented. Sometimes plans are not implemented because the advocates who helped develop the plan have moved on and are not monitoring its implementation. With no one to take the advocate's place, the agency is left to implement the plan according to its own goals. Without monitoring and enforcement, a good plan is just an academic exercise. Advocating

during implementation will maximize the impact of a good plan or minimize the negative impact of a bad plan.

### **Advocacy Strategies in the Planning Process**

Within formal public participation processes, advocates should employ a multi-prong approach including:

- Oral testimony at public hearings/meetings;
- Written testimony at public hearings;
- Meeting with decision-makers outside of the public process;
- Election or appointment to the planning body;
- Participation on a working group; and
- Drafting proposed sections or programs of the plan.

Outside the formal public participation process, advocates can influence the process through:

- Media campaigns;
- Letter writing or phone calls;
- Non-violent direct action;
- Organizing;
- Litigation;
- Ballot initiatives; and
- Negotiation.

### **A. Testimony at a Public Hearing or Meeting**

Public hearings or public meetings are forums initiated by government agencies, commissions and elected bodies to convey information to and elicit input from the general public. At such meetings there normally is an opportunity for the public to comment on each agenda item as well as non-agenda items.<sup>2</sup> These hearings and meetings are advocacy opportunities because they provide a forum to educate and persuade decision-makers, and to generate public support for the advocates' positions.

#### **1. Working With Stakeholders With Shared Self-Interests**

Our advocacy can be more powerful when done in partnership with others that share our interests. Based on the stakeholder power analysis, identify and enlist allies who can help the

---

<sup>2</sup> Cal. Gov't Code §54954.3 (2016).

advocacy effort. These allies may include friendly decision-makers, like city councilmembers, that support your advocacy interests. Working with other stakeholders can provide a variety of benefits:

- Promote additional influence over decision-makers;
- Share the research, writing, meeting and testifying workload;
- Expand areas of expertise; and
- Ensure that your efforts serve the community.

### **2. Knowing What is on the Agenda**

In general, California's Open Meetings Act, known as the "Brown Act," requires that an agenda be prepared and publicly available 72 hours before a regular meeting and 24 hours before a special meeting.<sup>3</sup> Agendas usually are available on the agency, commission or elected bodies' websites. They also can be obtained at the city or county clerk's office or at the relevant government office, such as the planning or housing department. The agendas also may be posted in a variety of public places, such as city hall, the local library or other public facilities.

### **3. Getting Your Issue on the Agenda**

Usually, someone on the committee hosting the meeting proposes an item for the agenda. Planning or housing staff, legislators or the public may also propose agenda items. The agenda items must be submitted with a certain amount of notice. (See substantive chapters for each specific planning process.) Ask a friendly decision-maker or staff person to submit your item for the agenda.

### **4. Obtaining Minutes, Resolutions and Other Documents From Prior Meetings**

The agency or body holding the hearing or meeting prepares notes or minutes of each meeting. While some of the content of the meeting, and thus the minutes of that meeting, are confidential because they may include litigation, personnel or other confidential matters, most of the contents should be available as public documents.<sup>4</sup> In addition, there are usually draft plans, maps, charts and other documents available as handouts for each meeting. Get copies and review everything relevant that has happened in the past. Make sure to keep a record of how, when and where you obtained each document.

To get copies, some advocates utilize the agency, commission or elected body's website where they can upload copies of minutes and meeting documents. You also may be able to directly call

---

<sup>3</sup> *Id.* §§54954.2, 54956.

<sup>4</sup> Cal. Gov't Code §54957.5 (2016).

the representative of the agency, commission or elected body hosting the hearing or meeting and ask for a copy of prior meeting minutes and documents. Usually, it is better to speak with a clerk or someone responsible for meeting logistics and not the policy makers themselves. The public is also entitled to review any existing video or audio recording of public sessions.<sup>5</sup>

## **5. Getting Copies of Documents Relevant to the Upcoming Meeting**

Once an agenda item is identified, it is crucial to obtain and review any supporting documentation, including staff reports. This information is sent to the public body in preparation for the meeting and must be available to the public. Often, documentation such as staff reports will provide crucial information about the thought process behind the agenda item, including resolutions proposed by staff. The staff reports and other documentation may be available on the governing body's website or can be obtained at the city or county clerk's office, or the relevant government office.

## **6. Testifying for the Record**

The purpose of oral and written testimony at a hearing or meeting is to influence decision-makers and to get issues into the record to preserve them for potential litigation. This is called "exhausting your administrative remedies." Before pursuing litigation, someone must first exhaust the available administrative arenas in which the problem could have been solved—e.g., the city council meeting. In most instances, only issues that were brought up and not resolved successfully in those administrative arenas may be raised in subsequent litigation.

Note that several items may be bundled into a single agenda item called the consent calendar and resolved with one single action. Any issue on the consent calendar must be "pulled" in order to make public comment on it. Advocates can request that the local legislator pull the item, or complete a form prior to the meeting, asking that it be opened up for public hearing and public comment.

Oral Testimony. Before the public hearing, advocates should meet with allies to agree upon testimony, organize presentations and recruit attendee turnout. Take time to write out points ahead of time. If the goal is to persuade decision-makers at the hearing, limit advocacy to three or fewer key points. Anything more than that is difficult to follow and can be covered in written comments submitted prior to the hearing.

Often speaker time is limited. In such cases, recruit enough speakers so that together you can cover your position. Often one speaker can assign her minutes to another speaker. This is a way

---

<sup>5</sup> *Id.* §54953.5.

to increase the per speaker time limit. If it isn't possible to assign minutes to another speaker, coordinate the comments in such a manner that each speaker covers a different topic and supports the overall argument. To protect the record, all oral testimony should also be presented in written comments—oral testimony is used to persuade and supplement the written comments.

Choose speakers who are most likely to influence the decision-makers. Consider whether the decision-maker will be most likely influenced by speakers from certain ethnic groups or neighborhoods, or by such factors as a speaker's prominence in the community or because of being a non-traditional ally. For example, a decision-maker may take notice of law enforcement or business leaders. Try to identify community members who can speak about the impact the decision will have on their family or community.

If the advocacy strategy is not focused on persuading this set of decision-makers and the chief intent is to exhaust administrative remedies and preserve the arguments for the record, oral testimony is less important. However, by appearing at the hearing, advocates can elevate their power of persuasion by advising the local body of potential illegalities and the ramifications of its decisions. Use this opportunity to highlight arguments with simple and straightforward data that supports your position. Simple charts and maps are very persuasive to policy makers. Charts and maps focus their attention and can frame the debate around your presentation of the problem.

### **Advocacy Tip:**

Submit detailed written comments prior to the hearing and then summarize key points in your oral testimony. It is unwise to trust recordings or transcriptions to accurately convey your testimony. In addition, transcribed oral testimony can be difficult to follow, especially when it is interrupted by questions. It is easy to forget key points and rush through some points. To make your oral testimony effective and comprehensive, write a succinct, clear statement that outlines the key points in your written comments.

Written Testimony. In general, written testimony is most persuasive when it is easy to read and simply organized. The easier it is to read, the more likely it is to be understood. Many decision-makers are unwilling to read through long and complicated comments. Write simple declarative sentences, supported by fact or law, underlining headings for key paragraphs and converting lists into bullet points. (See Appendix E for sample comment letters.)

Data portrayed in charts and maps is more persuasive than text. Support arguments with charts and maps, as long as they are easy to understand. Complex charts and maps may be worse than

submitting nothing at all. Refer to Chapter 5 and the data sources in Appendix B for help in creating meaningful maps.

Decision-makers may be more easily persuaded by comments from a variety of stakeholders, especially if they are influential in the community. To help other stakeholders make effective comments, provide a sample comment letter that other organizations and individuals can use to submit their own comments. If litigation becomes necessary, all testimony, whether verbal or written, becomes part of the record.

Meet with decision-makers prior to the hearing. Sometime before the meeting, meet with the decision-makers you seek to influence. Decision-makers rarely change their positions at a public meeting. To get decision-makers to adopt the position being advocated, it is essential to convince them to take this position before the public meeting. For tips on conducting private meetings, see Appendix D.

### **B. Direct Membership on Appointed or Elected Planning Bodies**

Advocates can influence planning outcomes from the inside by seeking appointment to planning bodies or advisory committees or by running for elected positions. Planning decision-makers hold elected and appointed positions. Some campaigns for elected positions, such as the city council, can be hotly contested and expensive. Still, advocates or allies may be able to compete for these seats. Elections for other committees may be much less competitive and accessible to advocates who cannot afford an expensive campaign. Affordable housing advocates and their allies should strongly consider running for these positions.

### **C. Participate on a Working Group**

Planning bodies often create working groups to help create drafts or recommendations for development of a plan. These working groups can greatly influence the ultimate content of the plan. Unfortunately, some decision-makers create working groups to divert unwanted stakeholder participation in the process. While the stakeholders get fully invested and occupied in developing the working group proposal, the decision-makers move forward without the stakeholders and with no intention of adopting the working group proposal. With this in mind, examine the composition of the working group. Does it represent a diverse group of stakeholder interests, including those of the ultimate decision-maker? If yes, it is more likely to be a valuable working group. If the working group includes mostly outsiders, proceed with caution as participation in the group may not be worth the time.



#### **D. Additional Strategies Outside the Formal Planning Process**

Sometimes the most effective way to shape a plan is through advocacy outside of the formal process, resulting in a more direct appeal to the decision-maker's self-interest. While not strictly planning-related strategies, the following is a list of strategies that may be effective in influencing decision-makers:

Media campaigns. Media campaigns can include press releases, giving interviews to reporters, facilitating media interviews for your clients or other stakeholders, writing letters to the editor, sending opinions to local newspapers or if possible, meeting with the editorial board of the paper to get a favorable editorial. Consider written media as well as local television stations.

Contact local legislators. Writing letters or making phone calls to local legislators who are decision-makers or have influence over decision-makers may further advocacy efforts.

Nonviolent Direct Action. Actions can include providing local legislators and members of the opposition with tours of impacted neighborhoods and successful affordable housing projects. Community groups may consider demonstrations, boycotts and distribution of leaflets. Litigation also may be a successful method to directly attack local policies affecting affordable housing.

Ballot Initiatives. Often, the votes of decision-makers do not reflect the actual will of the constituents in the community. In such cases, sponsoring a successful ballot initiative may achieve the desired results without having to navigate the local legislative process. A ballot initiative allows citizens to bypass the legislative body and go straight to the public. The process requires the proponent to obtain an official title and summary of the proposed initiative from the Attorney General and then gather a requisite number of signatures from registered voters who support the initiative. A second method, the indirect initiative process, allows a citizen to appeal directly to the Legislature in order to place a measure on the ballot.

Negotiating "Community Benefits" Agreements. A Community Benefits Agreement is a legally enforceable contract negotiated between community groups and a developer, setting forth a range of community benefits that the developer agrees to provide as part of a development project in exchange for community support for the project.<sup>6</sup> See Appendix E for a sample Community Benefits Agreement.

---

<sup>6</sup> For more information on Community Benefits Agreements, see <http://www.goodjobsfirst.org/sites/default/files/docs/pdf/cba2005final.pdf> or [http://www.saje.net/site/c.hkLQJcMUKrH/b.2315801/k.9080/Figueroa\\_Corridor\\_Coalition.htm](http://www.saje.net/site/c.hkLQJcMUKrH/b.2315801/k.9080/Figueroa_Corridor_Coalition.htm).

*Disclaimer:* The Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date. However, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016)

## Chapter 5: Using the Census Bureau's Webpage: A Hands-On Guide<sup>1</sup>

Advocates often need statistical information to support legal claims. For example, in researching a jurisdiction's compliance with the housing element of the general plan, advocates may need to know the number of rental versus home ownership units in an area. Race and class statistics can show segregation trends in a geographic area and suggest or demonstrate violations of fair housing laws. This chapter provides the basic information necessary to begin exploring the wealth of online demographic data and data processing tools. The chapter focuses on the U.S. Census Bureau but is not an exhaustive account of the Bureau's resources or of the other online mapping applications mentioned. Instead, this chapter provides a basic "hands on" tutorial for the Bureau's website and suggests additional data and mapping resources that may be useful to advocates.<sup>2</sup>

The Census Bureau provides detailed national, regional, local, and neighborhood demographic data.

The Bureau provides detailed national, regional, local, and neighborhood demographic data. The Bureau's webpage provides access to all of the Bureau's data collections, including Decennial Census and American Community Survey data.<sup>3</sup> Online analysis tools including mapping applications are also available through the website.

Bureau surveys, such as the Decennial Census, are the primary sources of data for most demographic data projects and can be an important piece of any advocate's toolbox. Part I of this chapter outlines the basic navigation and use of the Bureau's website. Part II explores advanced uses of the Bureau's website including obtaining demographic data pertaining to a particular area or subject. Part II also provides a summary of alternative data sources for housing advocacy. Finally, Part III provides a list of online mapping applications, focusing on California-specific applications.

---

<sup>1</sup> Many thanks to Legal Services of Northern California for providing the first draft of this Chapter.

<sup>2</sup> Due to the "hands on" nature of the tutorial, this Guide is best utilized by accessing the Internet while reading and working through Parts I and II.

<sup>3</sup> The American Community Survey (ACS) provides updated Census information for significant metropolitan areas. Unlike the Decennial Census, however, it is limited to cities and towns and does not provide information for smaller areas. The ACS is a good place to look to check recent trends in a city.

### I. The Bureau Website

The Bureau's homepage is located at <http://www.census.gov/>. The homepage provides links to information regarding the Bureau, Bureau-produced data sets,<sup>4</sup> and other information. American FactFinder is the primary portal to access Bureau economic, population, and geographic data. American FactFinder can be accessed through the Bureau main page or at <http://factfinder.census.gov>. American FactFinder provides access to a variety of surveys conducted by the Bureau including the Decennial Censuses, the American Community Surveys (ACS), American Housing Survey,<sup>5</sup> and the Economic Censuses.<sup>6</sup>

Review the Frequently Asked Questions ("FAQ") and Glossary pages accessible from the links located along the top of the American FactFinder homepage. The FAQ provides information ranging from how to download data sets to finding demographic data for zip code areas. The Glossary provides definitions of terms used in Bureau surveys. Because common definitions may differ from Bureau definitions, it is important to familiarize yourself with Bureau definitions in the Glossary. Bureau definitions of race and ethnicity can be confusing, so new users will save hours of time by reading the Glossary section.<sup>7</sup> A failure to understand Census definitions will lead to incorrect conclusions about community demographics that may undermine the validity of community advocacy efforts.

Links to "Data Sets" and to topic-specific search engines, such as "Housing," "People," and "Fact Sheets" are found on the left side of the American FactFinder homepage. The topic-specific search engines are useful for general research and for finding demographic characteristics of states, counties, and cities. These search engines will not provide data regarding the spatial location of people with specified demographic characteristics within a geographic region. For example, these search engines describe housing characteristics in Los Angeles such as total units, ownership versus rental units, and occupied versus unoccupied units. However, these engines cannot provide the spatial distribution of owner and rental units throughout the city, so they are less useful when determining whether there is segregation by neighborhood or zip code.

---

<sup>4</sup> "Data sets" are the different surveys conducted by the Bureau. The most recent Decennial Census is one type of dataset.

<sup>5</sup> American Housing Survey is sponsored by the Department of Housing and Urban Development (HUD) but conducted by the Census Bureau. It includes information about owner and renter occupied housing, unit size, rent or mortgage costs, and habitability issues. More information at: <http://www.census.gov/programs-surveys/ahs.html>.

<sup>6</sup> The Economic Census is measure of business and the economy conducted every five years. It includes information about retail sales, types of businesses, the number of employees and wages of employees in different business sectors. More information at: <http://www.census.gov/econ/census/data/>.

<sup>7</sup> For an extensive analysis of the Hispanic/Latino Census category see CLARA E. RODRIGUEZ, CHANGING RACE: LATINOS, THE CENSUS, AND THE HISTORY OF ETHNICITY IN THE UNITED STATES (2000).

In many cases, the general data provided by the topic search engines is only a starting point. The composition of a city's population might be useful, but most advocates will be more interested in segregation patterns in the region. Parts II and III will address the appropriate tools for acquiring such data.

## II. Using Available Census Data

This section focuses on the acquisition of data for specific geographic areas within a city. The Bureau is prohibited from distributing data that could be used to identify survey participants, so specific information may be omitted in some cases. Details about what information the Bureau suppresses to protect individual privacy can be accessed by clicking the "Data Protection & Privacy Policy" link at the bottom of the American FactFinder homepage.

The smallest geographic unit of Census data is called a "block." Multiple blocks are combined to make a "block group." Multiple block groups are combined to make a "tract." Census block groups and blocks are, in most instances, the most useful geographic unit because they contain the most detailed information and can be used to compare neighborhoods.

### A. Steps to Access Census Block and Census Tract Data

**Step 1:** The first step to acquiring Census block and block group data is to locate the tract, block group and block numbers for that area. There are several different ways to locate these numbers. You can enter a specific street address using the "Address Search" tool at the bottom right of the American FactFinder page. Alternatively, if you want to look at a larger area, you can use the mapping tool to select a specific area. To use the map:

- Access the "Reference Maps" page on the right hand side (towards the bottom) of the American FactFinder homepage (<http://factfinder.census.gov>).
  - Select a state, e.g., California, then click go.
- A page will appear with the map of the selected area.
  - Select the specific geography you want to analyze from the "Select Geographies" drop-down menu, e.g., County.
  - To display the block groups, click on the "Boundaries and Features" option.
    - Select the year you wish to view block groups from, i.e., 2010.
    - Then check the "Boundary" and "Label" boxes next to "2010 Block Group."

- Click "Update."
- You may need to zoom in to select the specific county in which you are looking for block groups.
- Once you find the county you are looking for, click on it to select it.
- Once the map is changed to the desired location, you can zoom in more to be able to see the block groups. The legend on the left hand side explains the different colored numbers and boundary lines on the map. For example, block numbers are all the same color.
- On the far left at the top in the "Your Selections" box, you can identify which selections are reflected on the map, clear selections, or save your search.
- To print or download, select one of those options from the blue bar at the top of the map.

By following the directions above, users can obtain maps of Census tracts, block groups and blocks. This area map serves as a reference document to help easily extract Census data for specific block groups and blocks in the area. Print a copy for easy reference.

**Step 2:** After creating an area map illustrating the location of Census block groups and blocks, it is simple to access demographic data relevant to those areas. Before beginning this process, download and copy the map previously created in Step 1.

The process for retrieving Census data is the same regardless of the data set or survey used. This section describes the process for obtaining a single type of data; it will explain how advocates working on local housing element advocacy may obtain the percentage of owner-occupied versus renter-occupied units in several block groups in the community. The same process can be used to access other types of Census data.

- Home ownership and rental rates are tracked in the Decennial Census. From the American FactFinder homepage (<http://factfinder.census.gov>), click the link "Guided Search" at the top of the page.
- From the Guided Search page:
  - Select "I'm looking for information about housing."
  - Click "next."

- A new “Topics” page will appear with several housing topics to choose from.
  - Select one or more of the topics (For example, to find information about Occupancy and Vacancy Status, select that topic, which is under “Occupancy Characteristic.”)
  - The topic will be added to your selections, then click “next.”
- The user is brought to the “Geographies” page.
  - Select a geographic type from the scroll-down menu.
  - Select “Block Group,” which is under State and County.
  - Select a state from the scroll-down menu, e.g., California.
  - Select a county from the scroll-down menu, e.g., Los Angeles.
  - Select the block groups you want to see or select all block groups within that county, and then click “Add to your Selections.”
  - Click “next.”
- A “Race/Ethnic Groups” page will appear.
  - You may search by specific race/ethnic group category or skip this step.
- A “Search Results” page will appear, displaying all of available tables, files, and documents based on your search criteria.
  - Choose one of them based on the type of data you are searching for, e.g., “Total Population in Occupied Housing Units by Tenure (ID: H11; Dataset: 2010 SF1 100% Data).”
- A new page will appear, displaying the data you chose.
  - You can print or download these data from the “Actions” bar.

After downloading the document, you can manipulate the data using Excel to calculate the percentage of rental and ownership units in each of the selected block groups. However, these data may not be very helpful unless the information is on a map. Part III introduces the online mapping applications. In many circumstances, you will not need to go through the process described above since the data compilation will occur from within the online mapping applications. However, mapping applications have limitations and there may be cases that require users to compile their own data. Furthermore, when presenting maps to communities, city



councils, or planners, advocates may be asked for the actual numbers upon which the map is based. Therefore, the process described above can be helpful to advocacy efforts.

### **B. Other Data Sources**

In addition to the Bureau, several other sources may contain demographic data useful to housing advocacy. Sources include:

- *Center for Urban Policy Research: State of the Nation's Cities Project*  
<http://ppppolicy.rutgers.edu/cupr/sonc/sonc.htm>
  - This database contains information on 77 American cities and suburbs. The database brings together over 3,000 variables from a wide variety of sources, allowing easy comparison of indicators on housing and land-use, income and poverty, employment and economic development, demographic measures, fiscal conditions, and a host of other health, social, and environmental indicators.
- *FFIEC Home Mortgage Disclosure Act*  
[www.ffiec.gov/hmda/](http://www.ffiec.gov/hmda/)
  - The Home Mortgage Disclosure Act (HMDA) provides public loan data that can be used to assist (1) in determining whether financial institutions are serving the housing needs of their communities and (2) in identifying discriminatory lending patterns. FFIEC produces aggregate tables for each metropolitan statistical area (MSA) or metropolitan division (MD), and individual institution disclosure reports. Aggregate tables of home mortgage lending activity and disclosure reports from 1999 through 2005 are available on this site. These FFIEC Reports are accessible through the "Reports" link of the FFIEC main page.

### **III. Third-Party Mapping Applications**

The Bureau provides a limited online mapping application, however, third parties have created easier and more user-friendly online mapping applications. This section focuses on applications provided by third parties.

As community mapping gains prominence as an effective community advocacy tool, more universities, non-profits and other organizations are making online mapping applications available to the public. This section provides brief descriptions of some of the most helpful online mapping

applications but does not address the specific strengths and weaknesses of each tool in detail. Advocates are encouraged to explore these applications.<sup>8</sup>

### **A. Mapping Applications**

*California Housing Partnership Corporation*

<http://chpc.net/advocacy-research/preservation/policymap/>

The California Housing Partnership Corporation's Mapping Tool allows users to map California's affordable subsidized housing. The tool brings together property-level information with useful data on poverty and renter cost burdens. It is a practical resource for those committed to tracking and preserving affordable housing in their region. As of this writing CHPC's mapping tool is unavailable due to an upgrade. It will be available in early 2017.

*National Housing Preservation Database*

<http://www.preservationdatabase.org/>

The National Housing Preservation Database incorporates all available data on federally subsidized housing properties. The database also features a mapping tool that displays all federally subsidized housing properties by type on an interactive map. The mapping tool allows users to view the assisted housing portfolio in user specified areas.

*Location Affordability Index*

<http://www.locationaffordability.info/lai.aspx>

HUD's Location Affordability Index helps users get a more complete understanding of the costs of living in a given location by accounting for variations between households, neighborhoods, and regions, all of which impact affordability. The index contains maps and other data tools that can help advocates, community developers, planners, and policymakers make data-driven decisions about local and regional planning and investment.

*Social Explorer*

[www.socialexplorer.com](http://www.socialexplorer.com)

Social Explorer is an online mapping application that allows the user to access historical data going back to the 18<sup>th</sup> Century to better understand the trends behind the numbers.

---

<sup>8</sup> For an introduction to community mapping as an advocacy tool, visit [www.policylink.org](http://www.policylink.org).

## **B. Secondary Sources**

*Legal Services of Northern California*

<https://lsntap.org/node/463>

Legal Services of Northern California has assembled an array of mapping information ranging from online mapping applications to race equity mapping Geographic Information Systems (GIS) tutorials. Designed with the advocate in mind, this site is a great starting place for community mapping information and information about using demographic mapping to support advocacy.

*PolicyLink*

[www.policylink.org](http://www.policylink.org)

PolicyLink is a national non-profit organization with extensive research, community advocacy, and economic development experience. Its Equitable Development Tool Kit contains a Community Mapping section that provides a good introduction to community mapping. Partnering with the USC Program for Environmental and Regional Equity, PolicyLink also created the National Equity Atlas described below.

*National Equity Atlas*

<http://nationalequityatlas.org/>

The National Equity Atlas contains data on demographic changes and racial and economic inclusion and is a comprehensive resource for tracking and measuring inclusive growth across the country. It is a useful resource for advocates because it can help them understand how their community's demographics are changing. The Atlas can also be useful in helping advocates assess how their community can participate in economic vitality.

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

## Chapter 6: Public Access to Government Documents

## 6. Public Access to Government Documents

### I. Purpose

Advocates often find that, in order to thoroughly research an issue or effectively advocate a position, they need documents in the possession of a government entity. This can be true when an advocate is questioning the federal government's policy on the federal housing voucher program, a public housing authority's decision to demolish or redevelop housing, or a city's monitoring practices regarding affordability covenants. Fortunately, advocates need not stay in the dark simply because the documents rest in the hands of the government. There are two key statutes which provide access to many of the documents advocates may seek: the Freedom of Information Act and the California Public Records Act.

#### A. The Freedom of Information Act

Individuals have a statutory right to obtain certain information relating to federal agencies' activities. This right is established by the Freedom of Information Act (FOIA) and enforceable in court.<sup>1</sup> FOIA is designed to ensure federal agency accountability to the public.<sup>2</sup> FOIA is often the best, and possibly only, method to gain access to certain federal government information. It provides access to government information such as an agency's operative law and procedure<sup>3</sup> and applies to most federal agencies including any executive department, government corporation, military department, independent regulatory agency, and certain offices within the executive branch (such as the Executive Office of the President).<sup>4</sup> As discussed below, the Department of Housing and Urban Development (HUD), the principle federal housing agency, is an agency under the executive branch and is subject to FOIA.<sup>5</sup>

Each person has a statutory right to obtain certain information relating to federal agencies' activities.

<sup>1</sup> See 5 U.S.C. §552 (2015).

<sup>2</sup> See, e.g., *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

<sup>3</sup> 5 U.S.C. §552(a)(2)(B) (2015).

<sup>4</sup> See §552(f)(1) (2015). For a list of agencies, go to <https://www.usa.gov/> (go to Menu, select "Government Agencies and Elected Officials," then click "A-Z Index of U.S. Government Agencies.").

<sup>5</sup> See *Community Legal Service v. United States Department of Housing and urban Development*, 405 F.Supp.2d 553 (2005). See also [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia). The HUD

Under FOIA, HUD is required to disclose records upon receiving a written request, except for those records (or portions of them) that are protected from disclosure. Requestors must make a proper request which “(i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed.”<sup>6</sup> However, a requestor need not disclose the grounds for the request.<sup>7</sup> Nor does a requestor’s status as a party to litigation alter the right under FOIA.<sup>8</sup> FOIA provides for mandatory disclosure except when the requested information is specifically exempted from disclosure.<sup>9</sup>

There are nine categories of exempt information under FOIA.<sup>10</sup> FOIA exemptions include:

- classified information related to foreign policy;
- trivial internal agency rules and practices and more substantial internal matters;<sup>11</sup>
- information that is prohibited from disclosure by another law;<sup>12</sup>
- trade secrets, and privileged or confidential commercial or financial information;<sup>13</sup>

---

regulations implementing FOIA are found at 24 C.F.R. §15 (2015). The Department of Justice and Department of Housing and Urban Development publish reference guides for the public. See Department of Justice Guide to the Freedom of Information Act (2009) at:

<https://www.justice.gov/oip/doj-guide-freedom-information-act> and Department of Housing and Urban Development Freedom of Information Act Reference Guide (2007) at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/foia](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/foia).

<sup>6</sup> 5 U.S.C. §552(a)(3)(A) (2015). However, advocates should request waiver of any fees.

<sup>7</sup> See e.g., *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157 (2004) (“Generally, when documents are within disclosure provisions of Freedom of Information Act (FOIA), citizens should not be required to explain why they seek the information.”) 5 U.S.C. §552); Edward A. Tomlinson, *Use of the Freedom of Information Act for Discovery Purposes*, 43 Md. L. Rev. 119, 123 (1984).

<sup>8</sup> See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978).

<sup>9</sup> See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975); FOERSTEL, *supra* note 2, at 123–25.

<sup>10</sup> 5 U.S.C. §552(b)(2015).

<sup>11</sup> 5 U.S.C. §552(b)(2); *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976) (discussing the proper scope of exemption (2)); *Founding Church of Scientology v. Smith*, 721 F.2d 828 (D.C. Cir. 1983) (discussing specific methods for determining whether a document falls under exemption (2)); *Don Ray Drive-A-Way Co. v. Skinner*, 785 F. Supp. 198 (D.D.C. 1992) (holding that non-law enforcement internal agency documents are not presumed to be internal documents under exemption (2)); *Maricopa Audubon Soc’y v. United States Forest Serv.*, 108 F.3d 1082 (9th Cir. 1997) (interpreting exemption (2) narrowly as applied to non-law enforcement internal documents).

<sup>12</sup> *Reports Comm. for Freedom of the Press v. United States Dep’t of Justice*, 816 F.2d 730 (D.C. Cir. 1987), *modified on other grounds*, 831 F.2d 1124 (D.C. Cir. 1987), *rev’d on other grounds*, 489 F.3d 749 (1989) (holding that in order for a statute to qualify as an exemption (3) withholding statute, it must facially exempt matters from disclosure). In most cases only federal statutes, not rules of procedure, trigger exemption (3). See *Founding Church of Scientology v. Bell*, 603 F.2d 945 (D.C. Cir. 1979). Once a statute is determined to trigger exemption (3), an agency must then determine whether the requested information falls within the non-disclosure provision of the applicable statute. Withholding provisions should be interpreted narrowly consistent with the policy underlying FOIA. See, e.g., *Anderson v. Health and Human Servs.*, 907 F.2d 936 (10th Cir. 1990); *but see Aronson v. IRS*, 973 F.2d 962 (1st Cir. 1992) (granting substantial deference to an agencies determination to withhold under exemption (3)).

- inter- and intra-agency communications that are privileged;<sup>14</sup>
- information involving matters of personal privacy;<sup>15</sup>
- certain law enforcement information;<sup>16</sup> and
- geological and geophysical information and data, including maps.<sup>17</sup>

FOIA also contains exclusions for information relating to ongoing investigations, intelligence operations, international terrorism, and informants.<sup>18</sup>

The FOIA exemptions are “explicitly exclusive,” meaning that, if a record does not fall within one of the above exemptions, agencies have no discretion to withhold the record.<sup>19</sup> However, if the

---

<sup>13</sup> 5 U.S.C. §522(b) (2015) (exemption (4)). See, e.g., *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 767–70 (D.C. Cir. 1974) (concluding that the legislative history of the FOIA “firmly supports an inference that [exemption (4)] is intended for the benefit of persons who supply information as well as the agencies which collect it.”) Trade secret protection has been recognized for design information such as blueprints. See *Herrick v. Garvey*, 200 F. Supp. 2d 1321, 1324–26 (D. Wyo. 2000), *aff'd*, 298 F.3d 1184, 1193–95 (10th Cir. 2002) (discussing whether technical blueprints were trade secret and/or commercially sensitive information subject to FOIA release). Furthermore, if information does not qualify as a trade secret, it may fall within the broader category of commercial or financial information, provided the information is privileged or confidential. *Id.*

<sup>14</sup> Exemption (5) has been interpreted by the Supreme Court to cover a broad range of information that is privileged pursuant to statute or common law doctrine. Exemption (5) is interpreted to prevent the use of FOIA to supplement civil discovery in a manner that eviscerates privilege and confidentiality doctrines. See *United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984). Exemption (5) is intended to encourage “frank discussion between subordinate and chief concerning administrative action.” *Env'tl. Prot. Agency v. Mink*, 410 U.S. 73, 87 (1973) (overruled on other grounds) (citations omitted). Frequently, exemption (5) is used to withhold documents falling under the “deliberative process” privilege, which shelters “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). “Factual portions of documents covered by the deliberative process privilege, however, must be segregated and disclosed unless they are so interwoven with the deliberative material that they cannot be segregated. The burden is on the agency to establish that all reasonably segregable portions of a document have been segregated and disclosed. *AIDS Healthcare Found. v. United States Food & Drug Admin.*, 2014 WL 10983763, at \*7 (C.D. Cal. Feb. 13, 2014) (internal quotations omitted).

<sup>15</sup> Exemption (6) covers intimate details and information about a person's life which would constitute an unwarranted invasion of personal privacy. Exemption (6) does not apply when the information pertains only the requestor herself. See *United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989).

<sup>16</sup> In order for information to fall within exemption (7), it must be a record compiled for law enforcement purposes and the release of the record would have one of the six effects specified in §552(b)(7). See, e.g., *FBI v. Abramson*, 456 U.S. 615 (1982).

<sup>17</sup> 5 U.S.C. §522(b) (2015) (exemption (9)). This exemption has been rarely invoked or interpreted. See, e.g., *Nat'l Broad. Co. v. SBA*, 836 F. Supp. 121, 124 n.2 (S.D.N.Y. 1993) (noting that a document withheld under exemption (4) “also contains geographic or geological information which is exempted from disclosure pursuant to FOIA Exemption 9”).

<sup>18</sup> See 5 U.S.C. §552(c) (2015).

<sup>19</sup> See *Adm'r, Fed. Aviation Admin. v. Robertson*, 422 U.S. 255, 262 (1975); see also 5 U.S.C. §552(d); 5 U.S.C. §552(d) (2015).

requested information falls into an exemption, the agency may elect to disclose the record.<sup>20</sup> In addition, the agency may waive its right to withhold otherwise exempt materials if it has disclosed them to a third party.<sup>21</sup>

FOIA places burdens on federal agencies to comply with its disclosure requirements. An agency must determine whether to comply with a FOIA request within twenty working days (excluding weekends and legal public holidays) of receiving the request.<sup>22</sup> When an agency denies a request, the agency must provide a reason for the denial and a notice of the right to appeal to the head of the agency.<sup>23</sup> The agency has 20 days (excluding weekends and legal public holidays) from the date of receiving the appeal to resolve the matter.<sup>24</sup> If the agency provides the requestor with notice, the agency may extend its response to a request and/or a determination on an appeal for up to working ten days for “unusual circumstances.”<sup>25</sup> The only valid “unusual circumstances” are (1) the need to collect documents not located at the government office where the FOIA request was made, (2) the need to search for, collect, and examine a voluminous amount of separate records to fill a request, and (3) the need to consult with other agencies to determine whether the requested documents should be released.<sup>26</sup>

A requestor may bring suit to compel disclosure if the agency does not meet the statutory time limits or claims an exemption to disclosure.<sup>27</sup> However, a requestor must first exhaust administrative remedies by filing an administrative appeal.<sup>28</sup> Courts are required to review FOIA non-disclosures *de novo*.<sup>29</sup> The agency bears the initial burden of proof to support the FOIA request denial.<sup>30</sup> Unlike the discovery process, FOIA case law disfavors in camera document review.<sup>31</sup> In most cases, the agency is required to file a “Vaughn index,” a detailed and manageable index of the withheld records and the grounds for non-disclosure, to justify its non-

<sup>20</sup> S. Rep. No. 93-854, at 158 (1974).

<sup>21</sup> *United States v. Metro. St. Louis Sewer Dist.*, 952 F.2d 1040, 1045 (8th Cir. 1992).

<sup>22</sup> 5 U.S.C. §552(a)(6)(A)(i) (2015).

<sup>23</sup> *Id.* For example, see 24 C.F.R. §15.106 (2007). HUD’s notice must explain how to appeal and provide the name and address of the HUD official to whom an appeal should be submitted.

<sup>24</sup> 5 U.S.C. §552(a)(6)(A)(ii) (2015).

<sup>25</sup> §552(a)(6)(B) (2015).

<sup>26</sup> §552(a)(6)(B)(iii) (2015).

<sup>27</sup> §552(a)(6)(B) (2015).

<sup>28</sup> *Wilbur v. C.I.A.*, 355 F.3d 675 (D.C. Cir. 2004).

<sup>29</sup> 5 U.S.C. §552(a)(4)(B)(vii) (2015) (“[i]n such a case the court shall determine the matter *de novo*, and may examine the contents of the agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action”).

<sup>30</sup> §552(a)(4).

<sup>31</sup> Edward A. Tomlinson, *Use of the Freedom of Information Act for Discovery Purposes*, 43 Md. L. Rev. 119, 131 (1984) (citing *Weisman v. C.I.A.*, 565 F.2d 692, 697 (D.C. Cir. 1977); *Mead Data Central, Inc. v. Dep’t of Air Force*, 566 F.2d 242, 250 n.10 (D.C. Cir. 1977); *Currie v. IRS*, 704 F.2d 523, 530–31 (11th Cir. 1983)).



disclosure.<sup>32</sup> The Vaughn index allows the plaintiff to challenge the government agency's specific grounds for non-disclosure.

### 1. Entities Subject to the FOIA

Agencies within the executive branch of the federal government, including regulatory agencies such as HUD and the Environmental Protection Agency (EPA), are subject to the requirements of the FOIA.<sup>33</sup> Each agency adopts its own FOIA regulations.<sup>34</sup> Offices within the Executive Office of the President that solely advise and assist the President are not subject to FOIA.<sup>35</sup> Further, FOIA does not apply to state governments,<sup>36</sup> local governments,<sup>37</sup> the judiciary,<sup>38</sup> Congress,<sup>39</sup> or private citizens.<sup>40</sup> Advocates who require state or local government records should utilize our state public records act. If seeking public housing authority information, advocates may need to file a FOIA request with HUD and a California Public Records Act request (discussed below) with the local public housing authority. Where the public housing authority receives both federal and state funds, a request under both Acts should be filed in order to ensure receipt of a complete record.<sup>41</sup>

---

<sup>32</sup> See, e.g., *Vaughn v. Rosen*, 157 U.S. App. D.C. 340 (D.C. Cir., 1973); Tomlinson, *supra* note 28, at 131.

<sup>33</sup> 5 U.S.C. §552(f)(1) (2015).

<sup>34</sup> See, e.g., 24 C.F.R. §15 (2015), titled "Public Access to HUD Records Under the Freedom of Information Act and Testimony and Production of Information by HUD Employees."

<sup>35</sup> See, e.g., *Rushforth v. Council on Econ. Advisors*, 762 F.2d 1038, 1042–43 (D.C. Cir. 1985).

<sup>36</sup> See, e.g., *Ortez v. Wash. County*, 88 F.3d 804, 811 (9th Cir. 1996); *Davidson v. Georgia*, 622 F.2d 895, 897 (5th Cir. 1980).

<sup>37</sup> See, e.g., *Kerr v. United States Dist. Court for the N. Dist.*, 511 F.2d 192, 197–98 (9th Cir. 1975) *aff'd* 426 U.S. 394 (1976).

<sup>38</sup> See, e.g., *Warth v. Dep't of Justice*, 595 F.2d 521, 523 (9th Cir. 1979).

<sup>39</sup> See, e.g., *Dow Jones & Co. v. Dep't of Justice*, 917 F.2d 571, 574 (D.C. Cir. 1990).

<sup>40</sup> See 5 U.S.C. §552 (2015).

<sup>41</sup> For further information about FOIA requests pertaining to federally subsidized housing, see The National Housing Law Project, HUD Housing Programs: Tenants' Rights (3d ed.) at 12.9 available at <http://www.nhlp.org>.

## B. The California Public Records Act

The California Public Records Act (CPRA) establishes a statutory right for any person to access California state and local agency public records.<sup>42</sup> The CPRA is modeled after FOIA<sup>43</sup> and is designed to ensure California government accountability to the public.<sup>44</sup> The CPRA strongly favors access to state and local government public records.<sup>45</sup> The definition of “public records” is broad and includes “every conceivable kind of record that is involved in the government process,”<sup>46</sup> such as electronic records, emails and data. The CPRA applies to any state or local agency.<sup>47</sup> Agencies include counties, cities (whether charter or not), and all government bodies described in Government Code section 6252(a).

The CPRA applies to any and all state and local agencies and is designed to ensure government accountability to the public.

The CPRA provides for mandatory access to records unless an exemption applies.<sup>48</sup> State or local agencies may provide also greater access to information than required under the CPRA.<sup>49</sup> Some of the statutorily exempt categories of public records are:<sup>50</sup>

1. preliminary drafts or intra-agency memorandum not prepared in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure;<sup>51</sup>
2. records pertaining to pending litigation;<sup>52</sup>

<sup>42</sup> CAL. GOV'T CODE (“GOV'T CODE”) §6250 *et seq.*; see also California Attorney General's Office, Summary of the California Public Records Act 2004, [http://www.ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://www.ag.ca.gov/publications/summary_public_records_act.pdf).

<sup>43</sup> *California State Univ. v. Superior Court*, 90 Cal. App. 4th 810 (2001).

<sup>44</sup> *Rogers v. Superior Court*, 19 Cal.App.4th 469 (1993).

<sup>45</sup> *Lorig v. Medical*, 78 Cal.App.4th 462, 467 (2000).

<sup>46</sup> *San Gabriel Tribune v. Superior Court*, 143 Cal.App.3d 762, 774 (1983).

<sup>47</sup> GOV'T CODE §6253.

<sup>48</sup> §6255 (2015); see, e.g., *Int'l Fed'n of Prof'l & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319, 329–30 (2007). Personal privacy interests served by nondisclosure cannot serve to exempt an entire file disclosure of only a portion constitutes a violation of privacy. *Braun v. City of Taft*, 154 Cal.App.3d 332 (1984).

<sup>49</sup> GOV'T CODE §6253(e).

<sup>50</sup> GOV'T CODE §6254 (2006). The CPRA disclosure exemptions should be constructed narrowly in favor of general disclosure. *Rogers v. Superior Court*, 19 Cal.App.4th 469, 475 (1993).

<sup>51</sup> GOV'T CODE §6254(a). This is not an automatic exemption. “If preliminary materials are not customarily discarded or have not in fact been discarded as is customary they must be disclosed.” *Citizens For A Better Environment v. California Department of Food and Agriculture*, 171 Cal.App.3d 704, 714(1985). The withholding agency bears the burden of proof and of persuasion that the withheld records meet the statutory requirements of §6254(a). *Citizens for a Better Env't v. Dep't of Food & Agric.*, 171 Cal.App.3d 704, 712 (1985). An internal statement of opinion regarding an agency's position on a specific topic may fall within exemption (a). *Id.* at 717.

<sup>52</sup> A document is exempt from disclosure under the CPRA only if it is specifically prepared for litigation. *County of Los Angeles v. Superior Court*, 82 Cal.App.4th 819, 830 (2000); *City of Hemet v. Superior Court*, 37 Cal.App.4th 1411, 1418 (1995). *But see Fairley v. Superior Court*, 66 Cal.App.4th 1414, 1420–21 (1998) (holding that a document may also be withheld under this

3. personnel, medical, or similar files, if disclosure would constitute an unwarranted invasion of personal privacy;<sup>53</sup>
4. records related to applications filed with agencies regulating financial institutions;<sup>54</sup>
5. geological and geophysical data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person;<sup>55</sup>
6. certain complaints and investigation files;<sup>56</sup>
7. the test questions and scoring keys used for licensing tests, employment examinations, and academic examinations;<sup>57</sup>
8. real estate records, appraisals or engineering or feasibility estimates and evaluations pertaining to agency acquisition of property;<sup>58</sup>
9. taxpayer information in connection with local taxes which is received in confidence and disclosure would result in an unfair competitive disadvantage to the individual supplying the information;<sup>59</sup>
10. records otherwise exempted by state or federal law, "including, but not limited to, provisions of the Evidence Code relating to privilege";<sup>60</sup>
11. correspondence of and to the Governor's office;<sup>61</sup>
12. most records in the custody of and maintained by the Legislative Counsel (the state office that provides legal advice to the legislature);<sup>62</sup>
13. state agency records related to collective bargaining other limited employee relations activities;<sup>63</sup>
14. certain native American grave, cemetery, and sacred place records;<sup>64</sup>

---

exemption if the dominant purpose for the document's preparation was for litigation use). This exemption provides certain documents with greater protections than would otherwise be afforded pursuant to the doctrine of attorney work product. *County of Los Angeles*, 82 Cal.App.4th at 831. It also guards against inadvertent disclosure of confidential litigation documents.

<sup>53</sup> GOV'T CODE §6254(c).

<sup>54</sup> GOV'T CODE §6254(d)(1).

<sup>55</sup> GOV'T CODE §6254(e).

<sup>56</sup> GOV'T CODE §6254(f).

<sup>57</sup> GOV'T CODE §6254(g).

<sup>58</sup> GOV'T CODE §6254(h).

<sup>59</sup> GOV'T CODE §6254(i).

<sup>60</sup> GOV'T CODE §6254(k). This incorporates other exemptions provided by state and federal law. Trade secrets that have been provided to the government by a private party pursuant to a contract or application could be exempt under this exemption; however, a mere promise by the government to keep a record confidential does not constitute a grounds for non-disclosure under this exemption. *Cook v. Craig*, 55 Cal.App.3d 773, 783 (1976).

<sup>61</sup> GOV'T CODE §6254(l).

<sup>62</sup> GOV'T CODE §6254(m).

<sup>63</sup> GOV'T CODE §6254(p).

<sup>64</sup> GOV'T CODE §6254(r).

15. certain financial data contained in service contractor registration records.<sup>65</sup>

The CPRA also allows for nondisclosure when the interests of nondisclosure substantially outweigh the public interest for disclosure.<sup>66</sup> This is commonly referred to as the “catchall” exemption. The courts have created the “deliberative process” exemption within the catchall exemption; but the agency bears the burden of demonstrating the public interest in nondisclosure.<sup>67</sup>

In addition, an agency can object to a request for records that is “overbroad” or that seeks “the production of a huge volume of material . . . .” Nonetheless, the agency must comply with a request, “so long as the record can be located with reasonable effort.”<sup>68</sup> If a request is believed to be overbroad, the courts require the agency to work with the requestor to derive a more specific request rather than refusing to comply.

The CPRA places a burden on state and local entities to comply with its disclosure requirements. An agency is required to determine if it will disclose the records within 10 days of receiving a CPRA request.<sup>69</sup> The agency is then required to notify the requestor of its decision.<sup>70</sup> In “unusual circumstances” an agency may extend its response time by no more than 14 additional days. The only valid “unusual circumstances” are the need to:

1. collect documents not located at the government office where the request was made;
2. search for, collect, and examine a voluminous amount of separate records to fill a request;
3. consult with other agencies to determine whether the requested documents should be released; and
4. compile data, to write programming language or a computer program, or to create a computer report to extract data.<sup>71</sup>

---

<sup>65</sup> GOV'T CODE §6254(x).

<sup>66</sup> GOV'T CODE §6255 (2015).

<sup>67</sup> *Citizens for Open Gov't v. City of Lodi*, 205 Cal.App.4th 296, 307 (2012).

<sup>68</sup> *California First Amendment Coalition v. Superior Court ex rel. Pete Wilson* (1998) 67 Cal.App.4th 159, 166, 78 Cal.Rptr.2d 847, 849. One court rejected an agency's argument that a death row inmate's CPRA request was too burdensome because it would take an employee an entire 40 hour work week to compile the requested records. *Weaver v. Superior Court*, 224 Cal.App.4th 746, 752, (2014), *review denied* (June 11, 2014). Another court rejected the argument that the \$43,000 price tag for collecting records justified a refusal to produce. *CBS Broad. Inc. v. Superior Court*, 91 Cal. App. 4th 892, 909 (2001).

<sup>69</sup> GOV'T CODE §6253(c).

<sup>70</sup> *Id.*

<sup>71</sup> GOV'T CODE §6253(c)(1)–(4) (2015).

If the agency invokes an extension, it must notify the requestor in the 10-day letter.<sup>72</sup> In practice, many agencies routinely use the 10-day letter as an acknowledgement of the CPRA request, and invoke one of the “unusual circumstances,” which delays the actual response. An agency’s failure to appropriately respond to a CPRA request may be challenged through litigation.<sup>73</sup>

The CPRA also mandates that state and local agencies make their records available for inspection during office hours.<sup>74</sup>

### **C. Entities Subject to the CPRA**

The CPRA applies to all state and local agencies, except for the California Legislature and the court system.<sup>75</sup> The CPRA does not apply to federal agencies, private individuals, or to non-Californian state and local entities. Individuals who require access to federal government information should make a FOIA request.

### **D. Effective Use of FOIA and the CPRA**

Although neither FOIA nor the CPRA was implemented specifically for use in litigation, both statutes, when properly used, can be a powerful tool for staying abreast of agency decisions, policy, and operations, for pre-litigation research, and for supplementing discovery during litigation. FOIA and the CPRA do not supplant the discovery process. They also do not provide greater access to government documents than discovery except in limited circumstances. However, the statutes are important tools for lawyers and advocates.

An individual’s rights under FOIA and the CPRA are not affected by the individual’s reasons for requesting information. Thus, in contrast to discovery rights that vary depending on the type of litigation or venue, access under FOIA and the CPRA remain constant. This section will address the three main uses for FOIA and the CPRA; (1) general research, (2) pre-litigation research, and (3) supplementing discovery.

#### **1. General Research**

Individuals and agencies that frequently deal with local, state, and federal agencies use FOIA and the CPRA to stay current with agency actions, regulations and studies.<sup>76</sup> Using the FOIA and

---

<sup>72</sup> GOV’T CODE §6253(c) (2015).

<sup>73</sup> GOV’T CODE §9070 *et seq.* (Legislative Open Records Act).

<sup>74</sup> GOV’T CODE §6253(a) (2015).

<sup>75</sup> GOV’T CODE §6252, *but see* Rule of Court 10.500 *et seq.*

<sup>76</sup> Tomlinson, *supra* note 35, at 126.

CPRA in this way can provide an advocate with information that facilitates better interactions with an agency and a starting point for case development when litigation arises.<sup>77</sup>

## 2. Pre-litigation Research

Unlike discovery, FOIA and the CPRA do not place time constraints on access to government information.<sup>78</sup> As such, FOIA and the CPRA can be an invaluable tool for pre-litigation and pre-discovery factual research where an advocate would otherwise not have access to discovery procedures. Such information can be used to establish a factual basis for advocating agency change without litigation.<sup>79</sup>

## 3. A Supplement to Discovery

Litigants may find that FOIA and CPRA requests can effectively supplement discovery for two reasons. First, FOIA and CPRA requests can be used to obtain government information both before<sup>80</sup> and after the discovery process.<sup>81</sup> Second, FOIA and CPRA requests are not limited to information that is relevant to the litigation at bar. For example, government information needed to develop a case may not be obtainable under Rule 34 of the Federal Rules of Civil Procedure due to relevancy but would be obtainable through a FOIA request.<sup>82</sup> Similarly, section 2017.010 of the California Code of Civil Procedure restricts the scope of allowable discovery requests based on relevancy whereas the CPRA contains no such restriction. Public records obtained under FOIA or the CPRA are admissible as secondary evidence of a writing.<sup>83</sup>

## 4. Using FOIA and the CPRA

Effective use of FOIA and the CPRA to obtain information depends on two factors: (1) the agency's stance towards compliance and (2) the requestor's ability to draft a request that meets both general guidelines and any specific applicable rules of agency procedure. Federal agency compliance with FOIA varies enormously from agency to agency. As a general rule of thumb, the further down the executive chain of command the agency is, the more it will view FOIA as an administrative law with which it must comply.<sup>84</sup>

---

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 155.

<sup>80</sup> *Wilder v. Sup. Ct. (Metropolitan Transit Authority)* 66 Cal.App.4th 77, 83 (1998).

<sup>81</sup> *County of Los Angeles v. Superior Court (Axelrad)*, 82 Cal.App.4th at 830.

<sup>82</sup> Tomlinson, *supra* note 28, at 141.

<sup>83</sup> EVID. CODE §1550 (2015).

<sup>84</sup> FOERSTEL, *supra* note 2, at 78.

There is little concrete information regarding state and local agency compliance with the CPRA. Some agencies have established departments devoted to CPRA compliance; others may not have dedicated resources for CPRA compliance, which can affect attitudes regarding compliance. California case law demonstrates a strong judicial bias towards disclosure and compliance with the CPRA.<sup>85</sup>

The form and substance of a request for information plays a substantial role in determining both whether and how fast a request is answered. Fulfilling a request can be a labor-intensive undertaking and any methods a requestor can use to minimize the agency work required will directly affect how quickly records might be produced and how a request is treated. Generally, the more specific a request is, the easier it is for an agency to answer. Requestors should describe the information sought as accurately and specifically as possible, but the agency has a duty to assist the requestor if the requests are unclear.

Because there is no singular agency responsible for answering FOIA or CPRA requests, the advocate must first determine where to send the request. Requests should be sent to the agency that possesses the records required. FOIA requests should be mailed directly to an agency's FOIA officer in an envelope marked "FOIA Request." The addresses of most agencies' FOIA officers can be located at the Department of Justice's website at <https://www.justice.gov/> under the FOIA section. The request should state that the request is being made pursuant to FOIA and include a contact phone number. See samples at Appendix F.

As with FOIA requests, CPRA requests should be sent to the agency that is in possession of the required information. For assistance determining whom to contact for a specific CPRA request, contact an elected official's staff. The CPRA lists 37 agencies that must adopt regulations stating the procedures for making a CPRA request,<sup>86</sup> including:

- Department of Transportation
- Department of Real Estate
- Department of Insurance
- Secretary of State
- Department of Water Resources
- Department of Parks and Recreation
- State Department of Health Services
- Employment Development Department
- State Department of Social Services

---

<sup>85</sup> See, e.g., *Black Panther Party v. Kehoe*, 42 Cal.App.3d 645 (1974).

<sup>86</sup> GOV'T CODE §6253.4 (2015).



- State Department of Mental Health
- State Department of Developmental Services
- Office of Statewide Health Planning and Development
- Department of Veterans Affairs
- Public Utilities Commission
- California Coastal Commission
- State Water Resources Control Board
- San Francisco Bay Area Rapid Transit District
- All regional water quality control boards
- Los Angeles County Air Pollution Control District
- Bay Area Air Pollution Control District
- Golden Gate Bridge, Highway and Transportation District
- Office of Environmental Health Hazard Assessment

If the agency in possession of the required records is mandated to adopt regulations pursuant to the CPRA, the agency's regulations should be followed.<sup>87</sup> Many agencies, such as the Department of Housing and Community Development and the Department of Fair Employment and Housing, post guidelines for access to their records on their agency website.<sup>88</sup> For local agencies, this information may be found either on their website or in the jurisdiction's local ordinances or codes.<sup>89</sup> For larger cities or counties, such as the City or the County of Los Angeles, it is often expedient to submit CPRA requests to the department that most likely holds the requested records. In many cases, CPRA requests can either be emailed or submitted through a website. If an agency has not adopted specific regulations for CPRA requests, or provided information on how to submit a request, the request should be mailed to the agency in possession of the records in an envelope marked "CPRA Request," and the enclosed request should state that the request is being made pursuant to the CPRA and include a contact name and phone number.<sup>90</sup>

---

<sup>87</sup> Regulations for state regulatory agencies can be found at [https://govt.westlaw.com/calregs/index?\\_lguid=ib7807d8129214394a1f95def33ca51e2&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/index?_lguid=ib7807d8129214394a1f95def33ca51e2&transitionType=Default&contextData=(sc.Default)).

<sup>88</sup> See, e.g., <https://cms.portal.ca.gov/dfeh/SiteEdit.aspx?p=3405>.

<sup>89</sup> For example, in Los Angeles, the City's Administrative Codes address public records in a section titled "Copies of Public Records." See [http://www.amlegal.com/nxt/gateway.dll/California/laac/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:losangeles\\_ca\\_mc](http://www.amlegal.com/nxt/gateway.dll/California/laac/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:losangeles_ca_mc).

<sup>90</sup> Note that a name is not required; a request can be made in person, and the agency cannot require disclosure of the name of the person making the request. However, if litigation becomes necessary to compel compliance with disclosure laws, a client will be necessary in order to obtain fees. See section (E)(2) below.



In some circumstances, an individual may not have to make a FOIA request to gain access to federal government information. Under FOIA, agencies are required to make government information available for public inspection and copying.<sup>91</sup> Records created on or after November 1, 1996 must be made available electronically and indexed.<sup>92</sup>

## 5. Agency Fees for Compliance with FOIA and CPRA Requests

Non-commercial FOIA requestors, such as legal services and community based organizations, can only be charged reasonable standard fees for document search and duplication.<sup>93</sup> Non-commercial FOIA requestors cannot be charged for the cost of document review. Documents may be furnished at a reduced rate or free of charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.”<sup>94</sup> Agencies may not require advance payment of the fee unless the requestor has previously failed to pay a fee or the fee exceeds \$250.<sup>95</sup>

Under the CPRA, requestors can only be charged the direct cost of duplication or a statutory fee established by an agency.<sup>96</sup> Agencies may not charge a requestor for cost of retrieval, inspection, and handling.<sup>97</sup> Agencies must exercise their discretion when determining whether to waive fees under the CPRA.<sup>98</sup>

---

<sup>91</sup> 5 U.S.C. §552(a)(2) (2015).

<sup>92</sup> 5 U.S.C. §552(a)(2)(E) (2015).

<sup>93</sup> §552(a)(4)(A)(ii) (2015).

<sup>94</sup> 5 U.S.C. §552(a)(4)(A)(iii) (2015); 24 C.F.R. §15.110(h) (2015). See *Community Legal Services*, 405 F.Supp.2d at 553 (court determined that CLS, a legal services organization, is entitled to a fee waiver since HUD documents sought concern the operations or activities of the government, would likely contribute to public understanding of those operations and activities, and would likely contribute significantly to public understanding). See also *Construction and Application of Public Interest Fee Waiver Provision of Freedom of Information Act (FOIA)* 5 U.S.C. §552(a)(4)(A)(iii), 47 A.L.R. Fed. 2d 263 (2010).

<sup>95</sup> 5 U.S.C. §552(a)(4)(A)(v) (2015).

<sup>96</sup> GOV'T CODE §6253(b) (2006); see *Shippen v. Dep't of Motor Vehicles*, 161 Cal.App.3d 1119 (1984) (holding that Veh.C. §1811 was a statute under which the department could charge fees in excess of the direct cost of duplication).

<sup>97</sup> *North County Parents Organization v. Department of Education*, 23 Cal.App.4th 144 (1994).

<sup>98</sup> *Id.*

**Advocacy Tip:**

Advocates working for non-profit organizations should indicate the non-profit nature of the work and request a fee waiver in their FOIA or CPRA request. Advocates should note how the request is related to the public interest, particularly in a FOIA request.

If the agency refuses to reduce or waive the fee, the advocate should request a review of the documents before the agency makes copies to ensure that only necessary documents are copied. Because agencies work differently, call the agency to see how fee waivers are handled and to determine whether a review of the file is desirable.

One federal court found that Community Legal Services was entitled to a fee waiver since the HUD documents sought concerned the operations or activities of the government. The court found that production of the documents would likely contribute to a public understanding of the operations and activities of HUD.<sup>99</sup>

**E. Dealing with Public Records Problems**

Both FOIA and the CPRA create a statutory right of access enforceable in court. However, difficulties obtaining records pursuant to a FOIA or CPRA request can often be dealt with informally. Also, as noted above, a FOIA requestor must exhaust any administrative appeals process before filing a lawsuit in court.

**1. Informal Techniques**

Difficulties with requests made under both FOIA and the CPRA can sometimes be resolved by talking to either the FOIA officer or other person responsible for handling the request. It may be necessary to invoke the assistance of your local federal representative when dealing with a non-responsive FOIA officer. Local elected officials may be able to assist individuals seeking access to information under the CPRA.

FOIA provides a requestor the ability to administratively appeal an agency decision to withhold records.<sup>100</sup> The agency must respond to an appeal within 20 working days of receipt.<sup>101</sup> The CPRA does not provide for any administrative appeal process. Requestors challenging a decision

---

<sup>99</sup> *Community Legal Services v. U.S. Dep't of Hous. & Urban Dev.*, 405 F. Supp.2d 553 (2005).

<sup>100</sup> 5 U.S.C. §552(a)(6)(A)(i) (2015).

<sup>101</sup> §552(a)(6)(A)(ii) (2015).

to not disclose documents under the CPRA can only enforce their right to access via an action filed in a state court.

## 2. Litigation

Individuals may enforce their right to access and receive information under both FOIA<sup>102</sup> and the CPRA<sup>103</sup> in court. Both act require that a client be named, but it is permissible to pursue enforcement in the name of a low-income or other impacted community.<sup>104</sup> FOIA requires a defendant agency to respond to a complaint filed in federal court within thirty days of being served unless the court otherwise directs.<sup>105</sup>

The CPRA, unlike FOIA, does not require the agency to respond to an initial complaint within a specific time period. Rather, the CPRA instructs courts to schedule responsive pleadings and hearing so as to resolve the CPRA litigation at the “earliest possible time.”<sup>106</sup> Agency decisions not to disclose public records are reviewed *de novo*.<sup>107</sup> The agency bears the burden of proof and persuasion regarding the grounds for nondisclosure.<sup>108</sup> Unlike FOIA, a court must review withheld documents *in camera* to determine if the documents are truly exempt.<sup>109</sup>

Under FOIA, a court may order an agency to pay reasonable attorney’s fees and litigation costs if the complainant substantially prevails and a balancing of (1) the suit’s benefit to the public, (2) the nature of the plaintiff’s interest, (3) the plaintiff’s commercial interest, and (4) the grounds for the government’s withholding justifies an award of attorney fees.<sup>110</sup>

Under the CPRA, a court *must* award reasonable attorney’s fees and court costs if the plaintiff prevails in litigation.<sup>111</sup> Prevailing is broadly defined, and includes cases where the suit motivated

<sup>102</sup> §552(a)(4)(B) (2015).

<sup>103</sup> GOV’T CODE §6258 (2015) (any person may institute proceedings for injunctive or declarative relief or writ of mandate).

<sup>104</sup> See Appendix F for sample requests.

<sup>105</sup> 5 U.S.C. §552(a)(4)(C) (2015).

<sup>106</sup> GOV’T CODE §6258 (2015).

<sup>107</sup> *Lorig v. Medical Board*, 78 Cal.App.4th 462, 467 (2000).

<sup>108</sup> *County of Los Angeles v. Superior Court (Axelrad)*, 82 Cal.App.4th 819, 825 (2000).

<sup>109</sup> GOV’T CODE §6259.

<sup>110</sup> 5 U.S.C. §552(a)(4)(E) (2015); *Stein v. United States Dep’t of Justice*, 662 F.2d 1245, 1259 (7th Cir. 1981).

<sup>111</sup> GOV’T CODE §6259(d) (2015); *Belth v. Garamendi*, 232 Cal.App.3d 896, 900 (1991) (fees for plaintiffs who obtained consent for release of records after suit filed); *Cnty. Youth Athletic Ctr. v. City of Nat’l City*, 220 Cal. App. 4th 1385, 1447 (2013) (fees ordered for CPRA plaintiff who obtained declaratory relief but no actual records); *Bernardi v. Cty. of Monterey*, 167 Cal.App.4th 1379, 1393 (2008) (fees with multiplier for plaintiff whose suit motivated agency to release records).

the agency to release records, or the plaintiff obtained declaratory relief. Attorneys' fees will only be ordered against a plaintiff if the court finds that the suit was frivolous.<sup>112</sup>

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

---

<sup>112</sup> GOV'T CODE §6259(d); *Bertoli v. City of Sebastopol*, 233 Cal.App.4th 353, 372 (2015), as modified (Jan. 30, 2015) (No attorneys' fees against plaintiff denied records where denial based on burden of responding to request; suit was not frivolous).

## Chapter 7: Housing Element Law

## 7. Housing Element Law

### I. What is Housing Element Law?

Recognizing that “the availability of housing is of vital statewide importance and that decent housing and a suitable living environment is a priority of the highest order,” the state legislature adopted the Housing Element law to ensure that local governments recognize their responsibilities in attaining these housing goals.<sup>1</sup> The legislature placed responsibility on state and local governments to facilitate the improvement and development of housing for all economic segments of the community.<sup>2</sup> Each local government is required to work cooperatively with other local governments and the state in addressing regional housing needs.<sup>3</sup> The Housing Element law allows a local government to maintain its flexibility in adopting planning and zoning policies and ordinances.<sup>4</sup> However those policies and ordinances must be compatible with state housing goals and regional housing needs.

Communities must plan for the existing and projected housing needs of all economic segments of the population.

Housing Element law has become the main vehicle through which the State affects local housing and land use policies. The law does not require local governments to actually build the housing (though Housing Element litigation may result in housing being built), but the adopted Housing Element must provide the following:

- an assessment of the community’s housing needs and an inventory of resources and constraints to meet the identified needs of the entire community as calculated by the state Department of Housing and Community Development (HCD);
- a statement of the community’s goals, quantified objectives and policies necessary to meet those needs;

---

<sup>1</sup> Cal. Gov’t Code §65580 *et seq.* All statutory references are to the Government Code unless otherwise specified. See *Committee for Responsible Planning v. City of Indian Wells*, 209 Cal.App.3d 1005, 1013 (1989).

Western Center thanks Craig Castellonet of Public Interest Law Project for assistance in drafting this Chapter. For a detailed review of the requirements of Housing Element Law, see the current edition of Public Interest Law Project’s California Housing Element Manual, available at: <http://www.pilpca.org/publications-trainings/>.

<sup>2</sup> §65581(b).

<sup>3</sup> §65581(d).

<sup>4</sup> §65581(c).

- a program of actions to implement the policies and achieve the goals and objectives of the program;
- to the extent adequate sites are not identified, a plan to rezone sites adequate to meet the need either within three years of the adoption of the Housing Element or such other period as may be specified under certain circumstances.<sup>5</sup>

Each jurisdiction's Housing Element must be updated on a regular schedule, ranging from 4 to 8 years, and must be reviewed by HCD before it is adopted. The revision process must include community input. The public participation process and HCD review both provide opportunities for advocates to influence the Housing Element.

## II. Housing Element Law is Useful for Advocates

Advocates can use Housing Element law to help build affordable housing. Local governments are required to account for low-income, farmworker and other types of housing in their Housing Element. Unless a community plans for production and preservation of affordable housing, new affordable housing will not be built, and we risk losing what we have worked hard to produce. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential predicates to obtaining a sufficient permanent supply of housing affordable to all segments of the community.

Some essential features of Housing Element law make it particularly useful to advocates:

- **Community participation** is required in the preparation of the Housing Element. This provides an opportunity for affordable housing advocates to urge the inclusion of policies and programs that promote deeply affordable housing and to forge partnerships with other groups in the community.
- **Specific sites must be identified** that are appropriate for affordable housing development. And if the community failed to zone enough sites to meet its affordable housing needs from the last Housing Element period, the Housing Element must also include a program to rezone enough sites to meet those needs within one year of the due date for the new element.
- **People experiencing homelessness** must also be accounted for in the Housing Element. The locality must make provisions in its zoning ordinance to permit the development of transitional housing and homeless shelters.
- **Legal leverage** is available if the locality fails to adopt a Housing Element or adopts one that is inadequate. A court can order the local government to halt all development until an

---

<sup>5</sup> §65583.

adequate element is adopted or make other orders including an order to approve a specific affordable housing development.<sup>6</sup> This is a critical legal tool because often the local government is allowing market rate housing and commercial development while failing to produce affordable housing. If the locality is prohibited from proceeding with other development, it gives the local government a strong incentive to bring its Housing Element into compliance. If the local government fails to implement a program by the date specified in the element, a court can order the jurisdiction to carry out the program.

### III. The Housing Element is a Mandatory Element of the General Plan

The Housing Element is one element of a community's general plan. All municipalities<sup>7</sup> in California must have a general plan. The general plan must provide a long-range plan for the future physical development of the community.<sup>8</sup> It must include seven mandatory elements: land use, circulation, housing, conservation, open space, noise and safety (which includes seismic and fire).<sup>9</sup> Following standard planning methodology, each element normally will consist of three parts: 1) an analysis of needs, resources, and constraints; 2) a declaration of goals and quantified objectives; and 3) programs addressing the needs and constraints and devised to achieve the goals and objectives. Housing Elements must also evaluate the appropriateness, effectiveness and progress in implementation of the previous Housing Element.

But the general plan is more than a vision of possibilities. The courts have found that the general plan is the "*constitution*" for future development in the community. It is the preeminent planning document, sitting atop the hierarchy of local land use measures. Once adopted, it has binding effect on the locality. Most other planning actions such as adoption of a specific plan or zoning ordinance, approval of a subdivision map, etc. must be *consistent* with the general plan. Known as the "consistency doctrine," it gives the general plan the controlling force of law.

---

<sup>6</sup> §65754-68755.

<sup>7</sup> Charter cities are also required to comply with Housing Element law. *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 998.

<sup>8</sup> §65000 *et seq.*

<sup>9</sup> §65302.



### General Plan Consistency

The Housing Element is one part of a community's general plan and developments cannot legally be approved unless they are consistent with the plan. If a Housing Element is not updated or not compliant with the law, the entire general plan is therefore inadequate and so are any proposed developments during this time. An inadequate Housing Element can be challenged legally and the court must require the adoption of an adequate element. Until that time, all development is restricted. This allows residents the legal influence to threaten development until an adequate element is adopted for the community.<sup>10</sup>

## IV. The Housing Element Revision Process

HCD starts the Housing Element revision process by determining how many additional units of housing each region in the state will need over the next revision period. HCD considers the projected population increase to determine the anticipated household growth rate, household sizes, household formation, vacancy rates and jobs-housing balance to determine an allocation of housing need for the region.<sup>11</sup> Each region of the state is allocated a specific number of housing units to meet the housing needs of people in four income categories, very low, low, moderate, and above moderate. (Income categories are measured based on Area Median Income, discussed below.) This allocation is termed the Regional Housing Needs Allocation or "RHNA" and pronounced "*reena*."

After determining the need for additional housing in each region, HCD allocates that need to the regional Council of Governments (COG). For example, there is a COG covering the Bay Area—the Association of Bay Area Governments (ABAG), and another one covering the greater Los Angeles area—the Southern California Association of Governments (SCAG). After HCD determines how many units of affordable housing will be necessary to meet the needs of the population in a given region over the

In addition to the housing needs determined by the COGs, the local jurisdiction must determine what portion of the very low-income RHNA should be allocated for extremely low-income households.<sup>12</sup>

<sup>10</sup> *Citizens of Goleta Valley v. Bd. Of Supervisors* (1990) 52 Cal.3d 553, 571 ("the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.")

<sup>11</sup> §65584.01(c).

<sup>12</sup> §65583(a)(1).

projection period, it allocates that number to COG. Check HCD's website<sup>13</sup> to determine what COG governs your city or county.

Next, the COGs assign each jurisdiction within the region with its "fair share" of the RHNA for the Housing Element planning period. The assigned need is broken down by the same income categories: very low, low, moderate, and above moderate. The COG's final distribution of the entire region's total housing needs numbers must remain consistent with the RHNA.<sup>14</sup> Therefore, if the COG reduces the regional housing need number for one community, it must distribute the adjustments to other local governments. Once the COGs determine the final distribution, it must be reviewed by HCD. In addition, if the local government does not accept the COG's regional housing needs determination, the local government can appeal the draft allocation by a writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5.

The RHNA is critically important because communities make plans in their Housing Element based on their housing needs. For example, if the RHNA does not account for all people experiencing homelessness in the jurisdiction, it will be harder for advocates to ensure that the jurisdiction plans for adequate housing to meet the shelter and permanent housing needs of that population.<sup>15</sup>

### State Income Limits

Each county has a separate area median income (AMI), so the dollar figures vary around the state.

- **Above Moderate (AM)** = above 120% of the area median income
- **Moderate (Mod)** = 80%–120% of the area median income
- **Low (LI)** = 50%–80% of the area median income
- **Very low (VLI)** = below 50% of the area median income
- **Extremely Low Income (ELI)** = below 30% of area median income

Every year HCD posts a list of the income limits on its web site at

<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/incnote.html>.

<sup>13</sup> The list of COGs is available at: <http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/>.

<sup>14</sup> §65584.05(g).

<sup>15</sup> For more about advocacy strategies, please see Part IV of the PILP California Housing Element Manual.

### **A. Deadlines to Revise the Housing Element**

The deadline to revise the Housing Element is different for each COG throughout the state. To follow the current time lines, check HCD's web site. The most recent information about Housing Element deadlines can be found at: <http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/>. Detailed information about Housing Element revision schedules is also available in Part II of Public Interest Law Project's California Housing Element Manual.<sup>16</sup>

### **B. Contents of the Housing Element**

Below is a brief summary of the main parts of the Housing Element to assist advocates in analyzing the document. Look for your jurisdiction's Housing Element on the City or County's website. If you are considering Housing Element litigation, you will need to make an official request for documents related to the planning process. (See Chapter 6 for more on public records act requests.)

1. **An Analysis of Existing and Projected Housing Needs.** The analysis must begin with the needs identified in the RHNA allocated to the jurisdiction. It must also analyze the special housing needs of seniors, persons with disabilities, large families, farmworkers, families with female heads of households, persons in need of emergency shelter, and other specified groups.<sup>17</sup>

#### **Advocacy Tip:**

To ensure that local governments accurately reflect community needs, advocates should also refer to the jurisdiction's Consolidated Plan, if it is required to prepare such a plan to receive federal funds from HUD.<sup>18</sup> As discussed in Chapter 11, this document typically reflects a reasonably accurate appraisal of the community's housing needs because more need will entitle the jurisdiction to more money. Advocates can use the Consolidated Plan as a cross reference to ensure that an adequate assessment is made in the Housing Element.

2. **A Site-Specific Land Inventory.** The inventory identifies vacant sites and sites with redevelopment potential suitable for housing.<sup>19</sup> It must also include an analysis of the

<sup>16</sup> See footnote 1.

<sup>17</sup> §65583(a)(1) & (a)(7).

<sup>18</sup> The federal government requires the state and city and counties of certain sizes to prepare a Consolidated Plan to receive several different sources of federal funds. The Consolidated Plan is the planning document for how the federal funds will be spent. See Chapter 11 of this manual for more information.

zoning and public facilities available at these sites and demonstrate that the jurisdiction has a zone where emergency shelters are permitted without other discretionary permits (i.e., “by right”). There are specific statutory requirements to facilitate the development of emergency shelters pursuant to 2007 legislation commonly referred to as “SB 2” and codified at Government Code sections 65582, 65583 and 65589.5.

**“By right”** development refers to a project that is permitted under zoning rules and is approved administratively without discretionary local government review, such as a conditional use permit (CUP).<sup>20</sup> Zones where housing and shelters can be built “by right” is important because it avoids NIMBY (Not In My Back Yard) problems that arise when development of affordable housing is subject to a public approval process.

The inventory of sites is critical and advocates should carefully examine whether identified sites are realistically available and appropriate for housing. For example, extremely large sites may be too expensive for a non-profit developer to purchase. Sites in industrial areas may not have access to public transportation and services, and may be subject to environmental hazards and development restrictions. Other sites might have topographical or other characteristics that will impede the type of high density development necessary to build affordable housing. Visiting the site with a nonprofit developer can help identify constraints to development. In addition, it is important to examine public transportation accessibility and neighborhood amenities to assess the appropriateness of the site.

The inventory of sites is critical to the Housing Element because it is directly tied to the RHNA figures that form a mandatory duty to provide sites sufficient “for the jurisdiction’s share of the regional housing needs for all income levels.”<sup>21</sup> To examine the adequacy of sites, seek the assistance of experienced advocates or affordable housing developers.

**3. An analysis of governmental constraints to residential development for all incomes.** The analysis must consider constraints to development of all types of

---

<sup>19</sup> §65583(a)(3) & (a)(4); §65583.2(a) & (b).

<sup>20</sup> §65583.2(i).

<sup>21</sup> §65583.2(a).

housing, including housing for persons with disabilities such as group homes and supportive housing.<sup>22</sup>

4. **A program to identify adequate sites.** This program identifies sites that will be made available during the planning period. The sites must have appropriate zoning densities and infrastructure to meet the community's need for housing (including its need for housing for extremely low, low, and very low income households, mobilehomes, farmworker housing and emergency shelters).<sup>23</sup>

Where the site inventory demonstrates that the jurisdiction lacks sufficient sites to accommodate its need for low and very low income housing, the element must contain a program that will make sufficient sites available for development at multifamily densities without discretionary approval, or "by right."

5. **A program to make sites available for lower income housing "by right."**  
Where the site inventory demonstrates that the jurisdiction lacks sufficient sites to accommodate its need for low and very low income housing, the element must contain a program that will make sufficient sites available for development at multifamily densities without discretionary approval, or "by right."<sup>24</sup>
6. **A program to zone sites to accommodate any lower income RHNA not accounted for in the prior planning period.** If a jurisdiction failed to rezone sufficient sites to accommodate its RHNA for the previous planning period, its Housing Element must include a program demonstrating that the rezoning will be accomplished within the first year of the planning period for the new Housing Element.<sup>25</sup> Note that the jurisdiction must rezone sufficient sites to accommodate this need regardless of whether the Housing Element includes such a program; the jurisdiction cannot avoid this requirement by failing to acknowledge it.<sup>26</sup>
7. **A Program to "address, and where appropriate and legally possible, remove government constraints" to affordable housing.** The obligation to remove governmental constraints compels local governments to deal with exclusionary zoning practices, policies restricting affordable housing and shelter development

---

<sup>22</sup> §65583(a)(5).

<sup>23</sup> §65583(c)(1) & §65583.2.

<sup>24</sup> §65583(c)(1); §65583.2(h) & (i).

<sup>25</sup> §65584.09; §65583(c)(1).

<sup>26</sup> §65584.09(b).

(such as unreasonable processing requirements, prohibitive development fees and standards), and NIMBY opposition.<sup>27</sup>

**Advocacy Tip:**

Advocates should question any Housing Element that claims that the community does not have a homeless population or otherwise documents a suspiciously low homeless rate. The jurisdiction may be transporting homeless individuals, or providing bus or train tickets to shelters and other homeless service providers outside of the immediate community. Homeless assistance providers in the surrounding area should be contacted to obtain accurate information about the homeless population in the community.

Advocates should also contact local food banks, welfare departments and churches to determine the adequacy of the homelessness analysis in the Housing Element.

If applicable, advocates should also refer to the Public Housing Authority (PHA) Plan, the Consolidated Plan, the Continuum of Care and the Ten Year Plan to End Chronic Homelessness to cross reference the needs of the homeless in the community. For more information on these federal plans, see Part IV of this manual.

8. **Programs to conserve and preserve existing private market and subsidized affordable housing.** In addition to facilitating the development of new housing, localities must also have plans to preserve and improve the conditions of existing housing.<sup>28</sup>

---

<sup>27</sup> §65583(c)(3).

<sup>28</sup> §65583(c)(4) & (c)(6).

There are a number of programs that local jurisdictions can adopt to promote affordable housing. Among others, jurisdictions should consider:

- To Create New Housing Opportunities:
  - Density Bonus Programs
  - Inclusionary zoning programs
  - Mixed-Use Development (commercial/residential)
  - Live-Work Opportunities
  - Land donation by local government & for-profit developers
  - Relaxation of development standards for affordable housing
  - Adoption of permit streamlining and other development incentive programs
  - Adoption of first time homebuyer programs
- To Bring in More Money:
  - Commercial Linkage Fees
  - Housing Trust Funds
  - Community benefits agreements with businesses
  - Application for federal, state and local funds
  - Supporting non-profit application of federal, state and local funds
  - Providing tax credits for Employer-Assisted Housing for Certain Employees
  - Utilizing the Mobilehome Park Resident Ownership Program
  - Seeking foundational, local business and church support
- To Preserve Existing Affordable Housing:
  - Non-profit support to purchase expiring projects
  - Rehabilitation loans for lower income households
  - Code Enforcement for slumlords
  - Relocation programs
  - Fair Housing counseling
  - Adoption of a Section 8 Anti-Discrimination Ordinance
  - Revision of Building Rehabilitation Codes
  - Revision of Historic Building Codes

### C. HCD Review and Advocacy

Prior to adoption of the Housing Element or any amendments,<sup>29</sup> the local government must submit a draft to HCD.<sup>30</sup> HCD is the state agency charged with reviewing draft and adopted Housing Elements to determine whether the element substantially complies with the statutory requirements. HCD has published multiple documents to guide local governments through the Housing Element process, all of which are available on its website.<sup>31</sup>

A local government must submit a draft of its revised Housing Element to HCD at least 90 days prior to adoption.<sup>32</sup> (See the box below for the Housing Element timeline.) A draft amended Housing Element must be submitted at least 60 days prior to adoption.<sup>33</sup> HCD then reviews the draft Housing Element or draft amendment and provides written findings determining whether the draft substantially complies with the Housing Element law. HCD must provide written findings to the local government within 90 days of the receipt of the draft Housing Element or 60 days of receipt of a draft amendment.

---

<sup>29</sup> Local governments amend their Housing Elements to either eliminate inconsistencies, clarify existing policies or programs, add policies or programs, or modify policies or programs to address recent changes to comply with new Housing Element statutory changes (e.g., Gov't Code §65583 was amended to require local governments to address at-risk affordable housing inventory by 1992).

<sup>30</sup> §65585.

<sup>31</sup> Housing Element Guidance available at: <http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/#guide>.

<sup>32</sup> §65585(b).

<sup>33</sup> *Id.*



**Housing Element Timeline:**

- Local government creates draft Housing Element with public participation;
- Local process occurs: workshops, planning commission hearings, city council or board or supervisor hearings;
- Local government submits draft Housing Element to HCD;
- Public submits comments to HCD within 90 days;
- HCD reviews and sends out comment letter within 90 days (60 days for a draft amendment). HCD required to consider written comments from the public;
- Local government either adopts Housing Element or modifies Housing Element in response to HCD comment;
- Where local government modifies, local government resubmits draft Housing Element to HCD 90 days before adoption.
  - If the local government adopts its draft despite HCD's finding that the draft does not comply with the law, the local government must explain why it believes its draft element is substantially in compliance.
- Local government adopts Housing Element;
- HCD conducts final review of adopted Housing Element.

In addition to participating in the drafting of the Housing Element and making comments at the public hearings adopting the element, advocates can also submit written comments during the HCD review process. Note that HCD must receive public comments soon after it receives the revised Housing Element, typically no later than 30 days after receipt. However, some elements are subject to streamlined review, which will require immediate comment to HCD.<sup>34</sup>

If HCD finds that the draft does not comply with the Housing Element statute, the local government has two options. It can either (1) modify the draft to conform to HCD's recommendations or (2) adopt the draft without changes. If the local government adopts the draft without changes, it must make findings explaining its conclusion that the draft substantially complies with the law.<sup>35</sup> If the local government modifies the draft Housing Element, it must resubmit the draft to HCD. Once the local government adopts a Housing Element, the local

<sup>34</sup> See footnote 1; Public Interest Law Project's manual contains a more detailed discussion of streamlined review.

<sup>35</sup> §65585.

government must once again submit a copy to HCD. HCD issues a written finding whether the adopted Housing Element substantially complies with the law within 90 days of receipt.<sup>36</sup>

**Advocacy Tip:**

The current status of HCD's review for any local government is posted on the HCD website.<sup>37</sup> HCD also provides on-line copies of all review letters sent to the local governments.<sup>38</sup> These tools allow an advocate to quickly focus efforts on communities that have not met the requirements of state law according to HCD records. If advocacy or litigation is contemplated, contact HCD to confirm that the web information is complete.

**D. Annual Reporting**

Each year, localities must report to HCD on the progress made by the community in implementing the programs of the element.<sup>39</sup> These reports are critical to monitoring compliance with Housing Element program commitments during the longer eight year Housing Element revision periods. Obtain these plan reports from HCD's website to determine whether your community is complying with its obligations over the term of the planning period.<sup>40</sup> Alternatively, the reports can be obtained with a public records act requests. (See Chapter 6 of this Manual).

**V. Enforcement**

Housing Element law is a powerful tool for advocates to achieve real change in the community and facilitate the development of housing for the most vulnerable members of the population. In order to advocate effectively, keep track of your jurisdiction's Housing Element timeline so that your organization can participate in the public process.

As part of the Housing Element public participation process, the local government must hold hearings before the planning commission and city council/board of supervisors. To preserve the right to litigate any deficiencies, someone—but not necessarily the advocate or client to bring

---

<sup>36</sup> §65585(g)–(h). The Housing Element and any amendments must be delivered to retail water and sewer providers. *Id.* §65589.7. The purpose is to ensure that the service providers provide a priority to proposed housing development projects for lower income households in their resource or service allocations. Beginning, July 1, 2006, the service providers must adopt policies and procedures to ensure the priority. However, the utility services do not have an affirmative duty to provide service when there is a supply shortage. *Bldg. Indus. Ass'n. v. Marin Mun. Water Dist.*, 235 Cal.App.3d 1641, 1650 (1991).

<sup>37</sup> <http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/>.

<sup>38</sup> *Id.*

<sup>39</sup> §65400.

<sup>40</sup> <http://www.hcd.ca.gov/regulations/>.

litigation—must provide either oral or written comments raising the deficiencies at the public hearing.<sup>41</sup> This prohibition does not apply where the issue could not have been raised by exercising due diligence or the public body prevented the issue from being raised. Even if the written comments have been submitted previously, submit them again for the public hearing.

The threat of litigation is serious. If a court finds that the Housing Element is not in compliance with state law, it must issue an order compelling the locality to bring its Housing Element into compliance within 120 days.<sup>42</sup> The court must also suspend the jurisdiction's authority to move forward with development, including approval of certain development permits, until it complies with the court order.<sup>43</sup> Since the development of affordable housing is usually consistent with the Housing Element, such development is not subject to the court's order suspending development authority.<sup>44</sup>

### VI. Related Legal Tools

In addition to Housing Element law, there are multiple other tools that advocates can use to promote the development of housing affordable to our clients. This section briefly addresses a few of these tools.

- Density Bonus<sup>45</sup>

Widely employed by developers, the Density Bonus law requires that local governments allow additional density when affordable housing is provided. For example, where zoning would generally restrict a development to two stories, a developer could be allowed to build housing three stories tall if the development includes a specific percentage of affordable housing units. This creates an incentive for private developers to incorporate affordable units into new housing. The density bonus range extends to 35% based on the percentage of affordable homes in a development. Local governments are required to offer multiple “incentives,” including limits on parking requirements that can be imposed when affordable housing is included. For example, if zoning would normally require two parking spaces for each unit of housing built, the developer could be allowed to include only 1 parking space per unit if affordable housing is incorporated into the development.

---

<sup>41</sup> §65009(b).

<sup>42</sup> §65754(a).

<sup>43</sup> §65755(b).

<sup>44</sup> *Id.*

<sup>45</sup> §65915.

- Inclusionary Zoning

Many local governments have sought to increase the supply of affordable housing by requiring the inclusion of affordable housing units in new developments. A 2009 Court of Appeal decision, *Palmer/6<sup>th</sup> Street Properties L.P. v. City of Los Angeles* (175 Cal.App.4th 1396), held that Los Angeles' inclusionary zoning ordinance requiring the inclusion of affordable rental units as a condition of development violated the Costa-Hawkins Rental Housing Act. Legislative efforts to overturn the decision are ongoing. However the California Supreme Court has upheld the constitutionality of local ordinances requiring developers to sell a portion of units in a new development for an affordable price.<sup>46</sup>

- Fair Housing Laws

Government Code section 65008 prohibits discrimination against affordable housing by local governments, in the form of laws, actions or policies towards affordable housing, residents of affordable housing and the developers of affordable housing. The law explicitly protects against discrimination based on race, sex, color, religion, ethnicity, national origin, ancestry, occupation, age, family, method of financing, and income level of occupants. The federal Fair Housing Act (42 U.S.C. §3601 *et seq.*) and the California Fair Employment and Housing Act (Govt. Code §12900 *et seq.*) may also apply. See Chapter 15 of this manual for more on Fair Housing.

**Advocacy Tip:**

Fair housing disparate impact applies in the planning context. Just as with the other state and federal fair housing laws (see discussion of Fair Housing laws in Chapter 15) Government Code section 65008 applies even when discrimination is not intentional. It applies to any local agency action, law, or policy that has a disproportionate impact on those protected by the statute: assisted developments, including emergency shelters and transitional housing, developers of assisted housing, or the potential occupants who are members of protected classes.

- Anti-Nimby Statute

California law requires local government to approve certain affordable housing developments, including shelters, unless certain rigorous findings are made under the Housing Accountability

---

<sup>46</sup> *California Bldg. Indus. Assn. v. City of San Jose*, 61 Cal. 4th 435 (2015) *cert. denied sub nom. California Bldg. Indus. Ass'n v. City of San Jose, Calif.*, 136 S. Ct. 928 (2016).

Act.<sup>47</sup> It also forbids local agencies from imposing unreasonable conditions on these developments so as to render development infeasible.<sup>48</sup>

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

---

<sup>47</sup> §65589.5.

<sup>48</sup> §65589.5(d).

## Chapter 10: Overview of Federal Planning Programs

## I. Purpose

Local governments must prepare planning documents in order to receive certain federal housing funds. These plans explain to the public how a community will spend money received from the federal government. Some plans must be prepared every year, providing advocates with a continuing opportunity to give input and recommendations about how the money should be spent. Other plans require complete revisions every five years. Five-year plans are important because they give advocates sufficient time to work with the local government to ensure that the longer term housing needs of the low-income community are properly identified and appropriately met.

The federal government gives money to states, cities and counties that must be spent on low-income residents.

There are a number of federal programs that provide money or other economic incentives to state and local governments in exchange for helping low and moderate-income residents. This chapter discusses many of the federal programs that are used by local governments. The chapter also describes the various plans that must be developed, adopted, and implemented by the localities in order to receive these federal funds.

Generally, the federal government provides funds that can be used by local or state governments to engage in the following activities:

- Promoting economic development in low-income neighborhoods and rural areas;
- Building new or improved affordable housing, or providing housing subsidies for lower-income people, in urban and rural areas;
- Providing housing assistance to people with HIV/AIDs and their families;
- Developing different types of housing for people without homes;
- Creating jobs and other money-making opportunities for lower-income people, including the homeless;
- Assisting people who are forced to move from their homes with appropriate relocation benefits;
- Making sure that new housing is built when lower-income units are lost or destroyed;

- Developing programs to reduce discrimination in their communities;
- Providing tax credits for the development of new affordable housing.

## II. Overview of Federal Housing Programs

It is important to take the time to understand the different federal housing programs and how they can be used to help residents in your community. Usually, these programs must be used together, or with state or local affordable housing funds, to obtain the highest benefit for the lower-income community. The receipt of federal housing subsidies, or living in federally-subsidized affordable housing, may be the only way for a family to avoid becoming homeless.

Federal housing programs must be used to help residents in your community.

Congress establishes the federal programs by statute, giving authority to the appropriate federal department to adopt implementing regulations and provide program guidance.<sup>1</sup> The U.S. Department of Housing and Urban Development (HUD) provides most federal housing programs through its four divisions: Office of Community Planning and Development (CPD), Office of Public and Indian Housing (PIH), Office of Fair Housing and Equal Opportunity (FHEO) and Office of Housing (see box below). The most common HUD housing and economic development planning programs are discussed here.

### Advocacy Tip:

When advocates know how the different federal housing programs work, where to get the information, how to speak in the terms the agencies use, and who the players are, it is harder for local governments to ignore or dismiss advocacy efforts. In addition to this manual, HUD's new website, <https://www.hudexchange.info/> is a good place to start building this knowledge. In addition to manuals and guides, HUD has also archived trainings designed for grant recipients that can be a helpful way to familiarize yourself with a program.

---

<sup>1</sup> HUD's guidance includes handbooks, guidebooks, notices and decisions, among other things. Most of this guidance can be obtained at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips). HUD uses its program divisions, such as "CPD" or "PIH" (see box) to identify its guidance by program area. References and citations to HUD guidance can also be found in an excellent manual called the *HUD Housing Programs: Tenants' Rights* published by the National Housing Law Project ([www.nhlp.org](http://www.nhlp.org)). *HUD Housing Programs: Tenants' Rights* is especially useful for obtaining older guidance that may no longer be available from the HUD website.



Several federal departments other than HUD govern important housing-related programs discussed in this manual.<sup>2</sup> The Internal Revenue Service (IRS) of the Department of Treasury governs the Low-Income Housing Tax Credit (LIHTC) program. This program provides tax credit financing to affordable housing developers. Sometimes referred to as “Section 42,” the LIHTC program has become one of the most popular housing programs in the United States. In addition, the Uniform Relocation Act (URA) protects residents who are displaced from their homes by government activity. The URA is governed by the Department of Transportation’s Federal Highway Administration (FHWA) and is discussed in Part III, Chapter 9.

Other federal programs provide housing-related assistance to low-income communities. The Rural Housing Service is a program within the U.S. Department of Agriculture. RHS provides housing subsidies for owner-occupied and rental housing in rural communities.<sup>3</sup> The Department of Homeland Security’s Federal Emergency Management Agency (FEMA) provides, among other things, emergency food and shelter grants.<sup>4</sup> Finally, the Community Development Financial Institutions Fund is a federally funded community development program that provides grants and loans for redevelopment, including affordable housing.<sup>5</sup>

---

<sup>2</sup> This Chapter focuses on HUD programs. For information about other housing programs managed by different federal departments, see Maggie McCarty, et al., Overview of Federal Housing Assistance Programs and Policy, Congressional Research Service (April 15, 2014) available at <https://www.hsdl.org/?view&did=752738>.

<sup>3</sup> See <http://www.rd.usda.gov/about-rd/agencies/rural-housing-service>.

<sup>4</sup> See <https://www.fema.gov/>.

<sup>5</sup> See <http://www.cdfifund.gov/>.

### **HUD's Program Divisions**

HUD is organized into four divisions: (1) Office of Community Planning and Development; (2) Office of Public and Indian Housing; (3) Office of Fair Housing and Equal Opportunity; and (4) Office of Housing. These divisions oversee the federal housing programs.

#### *Office of Community Planning and Development (CPD)*

This department oversees community development and revitalization programs, including housing and homelessness programs. CPD deals with cities, counties, the State of California and local non-profits and consortia. CPD is also responsible for enforcing federal relocation laws (see Part III, Chapter 9).

#### *Office of Public and Indian Housing (PIH)*

PIH is responsible for overseeing public housing authorities and administering conventional public housing, the Section 8 housing choice voucher and related programs.

#### *Office of Fair Housing and Equal Opportunity (FHEO)*

FHEO is the fair housing division of HUD. FHEO receives and investigates discrimination complaints, reviews fair housing compliance, and refers matters to the Office of General Counsel.

#### *Office of Housing*

The Office of Housing handles project-based Section 8 housing programs and the Federal Housing Administration (FHA) homeownership program.

Each regional HUD office and most sub-regional local offices have staff working in each of these divisions. Information about the California HUD offices can be found at <http://portal.hud.gov/hudportal/HUD?src=/states/california/offices>.

Each year, after the federal budget is approved and appropriated, the HUD budget is disbursed. Some money is given out as “entitlement” grants that are automatically disbursed to eligible cities, counties, states and housing authorities. This portion of the money is disbursed to these entities through HUD formulas, often called block grants.

Other money is awarded on a competitive basis. To compete, local governments, non-profit organizations or consortia must prepare applications for funds. A consortium is usually a group of community-based organizations and local government agencies working together on one or several housing or community development activities. For example, most of the funds used to

address homelessness or to provide housing for people with HIV/AIDS and their families are given through the competition. The process is usually completed through the SuperNOFA application which HUD posts on its website each year.<sup>6</sup> HUD also posts the winners of the competitive funding awards annually on its website.

There is never enough money to meet the need for affordable housing. Several advocacy groups in Washington D.C. lobby Congress each year to increase federal funding for affordable housing programs and programs to address homelessness. National Low Income Housing Coalition ([www.nlihc.org](http://www.nlihc.org)), National Coalition for the Homeless ([www.nationalhomeless.org](http://www.nationalhomeless.org)) and National Law Center on Homelessness and Poverty ([www.nlchp.org](http://www.nlchp.org)) are just a few of the groups in Washington that work to ensure that federal money goes to assist the most vulnerable members of our communities in accessing safe housing. These groups are also a helpful source of information about federal trends in housing programs and data about homelessness and affordability. For regular analysis and updates about budget issues impacting low-income communities, visit the Center on Budget and Policy Priorities blog at [www.cbpp.org](http://www.cbpp.org).

Public Housing Authorities (PHAs) also receive HUD allocations from Congress each year. This money is disbursed by a formula set by HUD and is generally used for the operation and administration of public housing and the Section 8 voucher program. In the past, Congress appropriated money for modernization or demolition and reconstruction of public housing through a program known as the HOPE VI, which was criticized for displacing low-income tenants and discontinued in 2010. In 2012, HUD developed the Rental Assistance Demonstration (RAD) as a preservation tool to stabilize at-risk public housing. Although not always successful, RAD has become a central part of HUD's rental housing preservation strategy, which aims to preserve affordable housing by allowing jurisdictions to convert public housing into project-based Section 8 housing.<sup>7</sup>

The following is a list of some of the federal housing-related programs that may be used in your community:

- Section 8 Housing Choice Voucher Program (Tenant Based Rental Assistance)
- Public Housing & related programs

<sup>6</sup> HUD's list of available funds is available here: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/grants/fundsavail](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/grants/fundsavail).

<sup>7</sup> [Notice, PIH-2012-32 \(HA\), REV-1](#) (July 2, 2013, tech. corr. Feb. 6, 2014).

- Project-Based Rental Assistance
- Section 202 (Housing for the Elderly)
- Section 811 (Housing for People with Disabilities)
- Community Development Block Grant (CDBG)
- Native American Housing Block Grants
- Native Hawaiian Housing Block Grants
- Housing Opportunities for People with AIDS (HOPWA)
- Self-Help Homeownership Opportunity Program
- HOME Investment Partnership Program (HOME)
- Homeless Assistance Grants
- Fair Housing & Housing Counseling Assistance
- Lead Based Paint Hazard Reduction Program

The remaining Chapters in this Section of the Manual provide a more in depth discussion of some of the more frequently encountered plans and programs.<sup>8</sup>

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

---

<sup>8</sup> For a detailed discussion for the rules governing individual tenancies in subsidized housing programs, National Housing Law Project's "Green Book" provides a comprehensive guide explaining federal regulations and case law for the major programs. Visit [www.nhlp.org](http://www.nhlp.org) to order a copy or find one at your local law library.

## Chapter 11: Consolidated Plan

## I. History

The Consolidated Plan, or “Con Plan,” is the major federal planning document used by most cities and counties. The Con Plan includes an analysis of the jurisdiction’s affordable housing and community development needs and proposed strategies to meet those needs. Each local jurisdiction submits a Consolidated Plan to the U.S. Department of Housing and Urban Development (HUD) in order to receive funding under HUD’s Community Planning and Development grant programs. Millions of dollars flow into local communities each year through the Consolidated Plan. As a result, it is one of the most important advocacy tools we can use to ensure that the needs of our clients are being met. In fact, HUD regulations require a significant and comprehensive public participation process.

The Con Plan is the major federal planning document used by most cities and counties.

Con Plans are adopted every five years and serve as a framework for the Annual Action Plan (Section V(D) below) and the Consolidated Annual Performance Evaluation Report, or “CAPER,” (Section V(G) below). The Action Plan and CAPER implement and report on the Consolidated Plan. These annual reporting documents provide advocates with ample opportunities for involvement during the Con Plan process. Advocates should familiarize themselves with Con Plan terminology and contents, and participate fully in the annual and five-year planning processes. Please review Part I of this manual for a detailed guide for effectively engaging in the public participation process.

## II. Legal Overview

Part of the Cranston-Gonzalez National Affordable Housing Act of 1990, the Comprehensive Housing Affordability Strategy (CHAS) is the statutory basis for the Consolidated Plan.<sup>1</sup> CHAS was intended to incorporate a local planning process and assessment of community housing needs with applications for federal funds. The statute refers only to the CHAS, but the Con Plan implementing the CHAS is more commonly referred to.

The CHAS (Comprehensive Housing Affordability Strategy) is the statutory basis for the Consolidated Plan.

---

<sup>1</sup> 42 U.S.C. §§12705 *et seq.*

In the Con Plan, HUD combines the applications for five federal funding programs—the Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), Emergency Shelter Grant (ESG) and Housing Opportunities for People with AIDS (HOPWA)—into one online system.<sup>2</sup>

**Advocacy Tip:**

Advocates learning about the Consolidated Planning process for the first time should spend time on HUD's website and look at the resources and training materials posted there to get a better understanding of how the program works:

<https://www.hudexchange.info/programs/consolidated-plan/>.

The Con Plan regulations require states, cities and counties, called “grantees,” to identify and address the housing needs of the lower income community. Grantees must include data in their Con Plans regarding homelessness, public housing and voucher waiting lists and the integration of Public Housing Authority (PHA) Plans and Con Plans.<sup>3</sup> Grantees are also required to include data regarding the race and ethnicity of people benefiting from different programs, and data regarding domestic violence, sexual assault and stalking under the Violence Against Women Act (VAWA).<sup>4</sup> As of 2012, jurisdictions submit Con Plans using the online “eCon” planning tool, which includes a mapping application pre-populated with data to assist in assessing community needs.<sup>5</sup>

Grantees use HUD's Integrated Disbursement and Information System (IDIS) to submit planning documents, draw down funds from the five programs, and report how funds were used. HUD uses this information to monitor the Grantees, and pre-populates IDIS forms with information previously submitted by each grantee to ensure grantees are accountable for meeting stated goals.

The Consolidated Plan incorporates five HUD program applications into one document.

Despite its potential to assist in effective planning, the Con Plan has been criticized. Since its creation, advocates have expressed frustration about how federal funds are spent. In addition, while the public participation requirements for the Con Plan are strong, they

---

<sup>2</sup> 24 C.F.R. Part 91. This manual was drafted before the 2016 presidential election. Trump's budget proposal to drastically cut HUD spending and eliminate the CDBG program was issued shortly before publication. If adopted, these devastating cuts will be addressed in future revisions.

<sup>3</sup> See 24 C.F.R. Part 91.

<sup>4</sup> *Id.*

<sup>5</sup> CPD-12-009 *Use of IDIS to Submit the Consolidated Plan*, available at: <https://www.hudexchange.info/resource/2674/notice-cpd-12-009-use-of-idis-to-submit-the-consolidated-plan/>.

are often ignored by local governments. This Chapter is intended to familiarize advocates with the funds available through the Con Plan and explain the process so that advocates are better equipped to ensure funds are spent in ways that benefit low-income people and further fair housing goals.

**Advocacy Tip:**

Since information can be changed in the database, the IDIS system can only be accessed by HUD and Grantees. However, since Grantees are now required to input compliance data into IDIS, the information on this database should be available from HUD through the FOIA process or by sending a Public Records Act Request to the local government. For more information about the public's access to government data, refer to Chapter 6.

**III. Federal Dollars in Your Community: Funds Included in the Con Plan**

This section describes the grant programs accessed through the Con Plan process, including permissible uses of funds and players involved in each program. Advocates working with particular populations, such as homeless individuals or people with disabilities, can identify what funding may be available to provide housing opportunities in their community and participate in the Con Plan process to ensure funds are used where they are most needed.

**A. HOME: The HOME Investment Partnerships Program**

HOME is a federal block grant program to help communities create affordable housing.<sup>6</sup> The HOME program is intended to:

- Increase the supply of decent, affordable housing to low and very low-income households, specifically through new housing units, rehabilitation of existing units, direct homeownership assistance, and short-term (two-year) tenant-based rental assistance;
- Expand the capacity of nonprofit housing providers;
- Strengthen the ability of state and local governments to provide housing and leverage public sector participation (i.e., HOME funds must be matched by nonfederal resources).<sup>7</sup>

<sup>6</sup> HOME is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended. Program regulations can be found at 24 C.F.R. Part 92.

<sup>7</sup> 24 C.F.R. §92.1. All regulatory citations herein refer to 24 C.F.R. unless otherwise specified.



## 1. Who are the HOME players?

Beneficiaries. The HOME Program is intended to benefit low (below 80% of AMI<sup>8</sup>) and very-low income households (below 50% of AMI).

Participating Jurisdictions (PJs). Each year, HUD determines the amount of HOME funds that will be awarded to states and local governments, called Participating Jurisdictions. The amount to be allocated to each PJ is determined by formula designed to reflect the housing need. The PJ may be any state, city, county, or consortium of local governments in the community that is designated by HUD to administer a HOME program. The State of California, larger cities and urban counties receive funds automatically each year from HUD. Smaller cities and non-urban counties do not receive an automatic HOME allocation. To receive HOME funds, they must compete for an allocation of the State HOME funds.<sup>9</sup>

Community Housing Development Organizations (CHDOs<sup>10</sup>). The PJ must designate *at least* 15% of its HOME allocation to a qualified non-profit CHDO. The CHDO must spend the HOME allocation on housing owned, developed or sponsored by the CHDO. To qualify as a CHDO, the non-profit organization must meet qualifications listed in the HUD regulations.<sup>11</sup>

Subrecipients. Upon receipt of its HOME allocation, the PJ selects a public agency or non-profit organization to administer its HOME program. HUD refers to this entity as the “subrecipient.” Often, the subrecipient also qualifies as a CHDO. A subrecipient only administers the federal funds; it does not receive the HOME money.

Developers. Both non-profit and for-profit developers may receive HOME funds for the development of housing. The developer may already own the property or may be working with an owner to develop the property.

Lenders/Funding Sources. As with most affordable housing development, a HOME project is likely to be leveraged with private financing from a lending institution as well as other types of

Participating Jurisdictions receive a formula allocation each year from HUD. To determine whether your jurisdiction is a “participating jurisdiction,” visit <https://www.hudexchange.info/grantees/>.

<sup>8</sup> Area Median Income or AMI, is the middle income for an area designated by HUD based on U.S. Census data. HUD uses the median income for families in metropolitan and non-metropolitan areas to calculate income limits for eligibility in a variety of housing programs. HUD estimates the median family income for an area in the current year and adjusts that amount for different family sizes so that family incomes may be expressed as a percentage of the area median income.

<sup>9</sup> Information about State HOME funds and allocation is available at: <http://www.hcd.ca.gov/grants-funding/nofas.shtml>.

<sup>10</sup> CHDO is pronounced “chodo.”

<sup>11</sup> 24 C.F.R. §§92.2; 92.300.

entities that provide money: redevelopment or foundation funds, state bonds, tax credits or state and local housing programs.

Third-Party Contractors. In addition to having a subrecipient administer the funds, the PJ may engage third-party entities or contractors to oversee specific aspects of the HOME program. These contractors may include architects, planners and consultants, who may engage in tasks such as preparation of the consolidated plan or project management.

Those that have a financial stake in the planning process may push decision-makers to allocate money in ways that do not assist the neediest members of the community. In order to influence the Consolidated Planning process, determine the deadline for submitting each Plan and Plan update by visiting your local jurisdiction's website. It is critical for decision-makers to hear from the low-income community so that funds will be allocated where they are most needed. For more on how to get involved in planning processes, see Part I of this manual.

## 2. What Can HOME Funds Be Used For?

The PJ must provide guidelines for spending HOME funds in its Consolidated Plan, including specific certifications about how the money will be used.<sup>12</sup> Eligible costs include:

- New construction of both rental and ownership housing, including the development of new public housing HOPE VI units.<sup>13</sup> The addition of housing units outside the walls of an existing structure is considered new construction.<sup>14</sup>
- Rehabilitation of existing housing. Rehabilitation includes alterations, improvements or modifications of existing housing structures (including moving an existing home to a new foundation or adding rooms outside existing walls of a structure).<sup>15</sup>

All rental housing developed or rehabilitated by HOME funds must meet HOME rental occupancy, affordability, and lease requirements, as well as health and safety standards.

<sup>12</sup> See 24 C.F.R. §504.

<sup>13</sup> §92.213. With the exception of the HOPE VI program, HOME funds cannot otherwise be used to acquire, rehabilitate or construct public housing units. However HOME funds may be used for affordable housing units in a project that also contains public housing units.

<sup>14</sup> §92.205(a)(3).

<sup>15</sup> §92.206; §92.251(b).

- Reconstruction (or rebuilding) of existing housing. This includes building new foundations, replacing existing foundations or replacing substandard manufactured housing with new manufactured housing.<sup>16</sup>
- Conversion of an existing structure to affordable housing.<sup>17</sup>
- Site improvements essential to the development, including off-site utility connections.<sup>18</sup>
- Acquisition of property (existing structures or vacant land) for either rental or ownership housing. If HOME funds are used for vacant land or land including a structure that will be demolished, construction of the HOME project must begin within 12 months of purchase.<sup>19</sup>
- Relocation costs related to the permanent and temporary displacement of low-income residents, including staff and overhead costs associated with providing relocation assistance. Persons displaced by HOME funded projects are entitled to relocation assistance. (For more information about relocation assistance requirements, see Part III, Chapter 9.)<sup>20</sup>
- Refinancing of single-family, owner-occupied homes in connection with a HOME rehabilitation program, provided that the owner does not take equity from the property.<sup>21</sup>
- Refinancing of multi-family rental developments to achieve long-term affordability (minimum 15 years), provided that the project is consistent with the PJ's refinancing guidelines established in its Consolidated Plan.<sup>22</sup>
- Project-related soft costs reasonable and necessary to covered projects. HOME funds cannot be used to pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.<sup>23</sup> Examples of eligible project soft costs include:
  - Architectural, engineering, and related professional services;
  - Tenant and homebuyer counseling (provided the recipient of counseling ultimately becomes the tenant or owner of a HOME-assisted unit);
  - Affirmative marketing and fair housing services to prospective tenants or owners of an assisted project; and
  - PJ staff costs directly related to projects (not including tenant-based rental assistance).

---

<sup>16</sup> §92.251(e).

<sup>17</sup> §92.205(a)(3).

<sup>18</sup> §92.205(a)(1).

<sup>19</sup> §§92.205(a)(2), 92.2.

<sup>20</sup> §§92.205(a)(1), 92.206(f).

<sup>21</sup> §92.206(b)(1).

<sup>22</sup> §92.206(b)(2).

<sup>23</sup> §92.206(d).

- Tenant based rental assistance. For the period of time that the development must remain affordable, HOME funds can be used to assist renters in HOME projects through tenant-based assistance.<sup>24</sup>

**Advocacy Tip:**

In response to the mass displacement of people due to Hurricanes Katrina and Rita in 2005, many jurisdictions used their HOME funds as emergency shelter assistance for the evacuees. In such cases, these jurisdictions are entitled to reimbursement from FEMA of the HOME funds spent.<sup>25</sup> Advocates should ensure that local jurisdictions are reimbursed for HOME funds used to assist victims of mass displacement.

- Homeowner assistance. The HOME program also includes the American Dream Downpayment Initiative (ADDI).<sup>26</sup> These formula grants are made to eligible PJs. ADDI funds may be used for downpayment assistance for low-income first time homebuyers and rehabilitation of homes that are purchased with ADDI assistance.<sup>27</sup>

**B. Housing Trust Fund (HTF)**

The Housing and Economic Recovery Act of 2008 (HERA) established the HTF to provide grants to state governments to increase and preserve the supply of rental housing for low and extremely low-income families and to increase homeownership among those families.<sup>28</sup> However the HTF was not funded until December 11, 2014, because the Federal Housing Finance Agency suspended allocations that Fannie Mae and Freddie Mac were required to deposit in the fund in November 2008, when Fannie and Freddie were under conservatorship.<sup>29</sup> The funds, initially set at \$174 million, were made available in the summer of 2016.<sup>30</sup> HERA requires Fannie and

---

<sup>24</sup> §92.209.

<sup>25</sup> See HUD Memo dated May 12, 2006 from Pamela H. Patenaude, Assistant Secretary, available at: [http://www.hud.gov/offices/cpd/library/katrina/051206\\_CPDmemo.pdf](http://www.hud.gov/offices/cpd/library/katrina/051206_CPDmemo.pdf).

<sup>26</sup> §92.600 *et seq.*

<sup>27</sup> §92.602(a).

<sup>28</sup> FR-5246-I-03 (January 30, 2015). For more information about the Housing Trust Fund, visit <http://nlihc.org/issues/nhtf>.

<sup>29</sup> *Id.*

<sup>30</sup> See HUD MAKES \$174 MILLION AVAILABLE THROUGH NEW HOUSING TRUST FUND (April 4, 2016) available at: [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2016/HUDNo\\_16-042](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-042).

Freddie to deposit .042% of their new mortgage purchases to fund the HTF and other designated programs as long as those agencies remain profitable.<sup>31</sup>

HTF dollars will be distributed as block grants to states and state-designated entities and targeted for the lowest income families. Like the HOME program, funds are distributed using a formula which is intended to reflect need.<sup>32</sup> All 50 states and D.C. receive a minimum allocation of \$3 million provided sufficient funds are available.

HTF's rules and guidelines are similar to those of the HOME program;<sup>33</sup> funds may be used for acquisition, new construction, reconstruction, and/or rehabilitation of housing. However HTF guidelines specify that at least 80% of funds must be used for rental housing, and no more than 10% for homeownership and administrative/planning costs respectively. The long-term affordability requirements for HTF are also stronger; rental projects must remain affordable for 30 years. Unlike HOME funds, HTF funds may be used for public housing units constructed or rehabilitated through the Choice Neighborhoods program. Federal regulations specify similar regulations for States' selection of subgrantees.

Since the HTF will vary in size depending on Fannie and Freddie's profits, HUD mandates that if the total HTF is less than \$1 billion, all funds must be used for extremely low-income housing.

### **C. Community Development Block Grant (CDBG)**

The primary objective of the Community Development Block Grant (CDBG) program is to benefit low and moderate income households.<sup>34</sup> CDBG is used to "improve communities by providing decent housing, a suitable living environment and expanding economic opportunities principally for persons of low and moderate income."<sup>35</sup> CDBG is the most flexible of the grants, and may be used for a variety of purposes, including affordable housing development and rehabilitation, renovation or construction of neighborhood facilities, economic development, provision of funding to Community-Based Development Organizations (CBDOs) for activities related to employment or economic revitalization, public services, public infrastructure improvements, parks, modification of structures for Americans With Disabilities Act (ADA) compliance, and crime prevention and awareness programs.

---

<sup>31</sup> For more information about HTF funds, see the National Low Income Housing Coalition website at: <http://nlihc.org/issues/nhtf>.

<sup>32</sup> §93.51(a)–(d).

<sup>33</sup> Regulations for the HTF are at 24 C.F.R. Part 93.

<sup>34</sup> Section 101(c), Housing and Community Development Act of 1974 (HCDA), as amended, Title I, Pub. Law 42 U.S.C. 5301(c). The CDBG regulations can be found in Chapter 24 of the C.F.R. at Part 570.

<sup>35</sup> *Id.*; 24 C.F.R. Section 570.1(c).

Importantly, at least 70% of the total CDBG allocation must benefit low and moderate income people.<sup>36</sup> In fact, the formulae used to determine how much money will be given to cities and counties are based on population (or population growth) and the number of people living below the annual poverty threshold. Data about the age of existing housing or prevalence of overcrowded housing is also used to determine the CDBG allocation.<sup>37</sup>

### What is the “Annual Poverty Threshold”?

Each calendar year, the U.S. Census Bureau determines the annual poverty threshold. The poverty rates are usually published a year after they are calculated. The annual poverty threshold is available at: <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

Importantly, the poverty rate established by the Census Bureau should not be confused with the poverty guidelines established by the Department of Health & Human Services (HHS). Although the HHS guidelines are used to determine eligibility for legal services and other federal subsidy programs, the guidelines do not govern the poverty levels used in HUD programs. For more information about the HHS poverty guidelines, visit the HHS website: <http://aspe.hhs.gov/poverty/>.

### 1. Who are the players?

The CDBG players are similar to those in the HOME program.

Beneficiaries. At least 70% of the CDBG money flowing into a jurisdiction is intended to benefit low and moderate income (up to 80% of AMI) households.<sup>38</sup> It is important to note that 70% is the minimum; a jurisdiction may use all of its CDBG funds for low income people—especially when the need for such expenditures is clearly demonstrated.

Entitlement Jurisdictions or CDBG Grantees. Cities with populations over 50,000 and counties larger than 200,000 are urban areas called “Entitlement Jurisdictions.” The State is also an entitlement jurisdiction. Every year, Congress automatically reserves 1% of the funds appropriated for CDBG by Congress to Indian tribes, then reserves an additional set amount for

---

<sup>36</sup> 42 U.S.C. §5301(c).

<sup>37</sup> Specifically, the CDBG grant amounts for entitlement grantees are determined by the higher of two formulas: (1) U.S. Census data based on overcrowded housing, population, and poverty; or (2) U.S. Census data based on age of housing, population growth lag, and poverty. 42 U.S.C. §5306.

<sup>38</sup> See footnote 8 for a definition of Area Median Income.

specified “insular” areas.<sup>39</sup> Of the remaining amount, entitlement jurisdictions receive 70% of that year’s CDBG money.<sup>40</sup> These entitlement jurisdictions are called “CDBG Grantees.”

The State of California’s Con Plan and Annual Plans are posted online on the Department of Housing and Community Development’s website at <http://www.hcd.ca.gov/policy-research/plans-reports/index.shtml>.

After the Entitlement Jurisdictions are paid, the remaining 30% goes directly to the states under the Small Cities CDBG Program. Small cities and rural counties use this program by submitting competitive applications about (1) the needs of low and moderate income people in their community and (2) how they will spend the grant to meet these needs or to prevent or eliminate slums or blight.<sup>41</sup>

In California, the Small Cities CDBG Program is operated by the State Department of Housing and Community Development (HCD). HCD has several different CDBG programs, including some specifically designed for economic development.<sup>42</sup>

Unit of General Local Government (UGLG). The UGLG is the community funded by the State to undertake CDBG activities. In the State CDBG program, the UGLG is often referred to as a state grant recipient.<sup>43</sup>

Subrecipients. The subrecipient is a non-profit organization or public entity that assists the Grantee in implementing and administering its CDBG program. Usually, the Grantee will use a non-profit for this purpose. If a public agency is used, the subrecipient public agency cannot be part of the Grantee’s legal government entity but can be a separate entity, such as a water and sewer authority.

In California, the Small Cities CDBG Program is operated by the State Department of Housing and Community Development.

Community-Based Development Organizations.<sup>44</sup> These organizations can be either non-profit or for-profit, but they cannot be government entities. In general, CBDOs focus on neighborhood

<sup>39</sup> See 42 U.S.C. §5302(a)(24). Insular areas refers to Guam, Northern Mariana Islands, Virgin Islands, and American Samoa.

<sup>40</sup> 42 U.S.C. §5306(a)(4).

<sup>41</sup> 42 U.S.C. §5306(d); see *Guide to National Objectives and Eligible Activities for State CDBG Programs*, December 2014, available at: <https://www.hudexchange.info/>.

<sup>42</sup> 25 C.C.R. §7052; Health & Safety Code §50825 *et seq.*

<sup>43</sup> 24 C.F.R. §570.486.

<sup>44</sup> 24 C.F.R. §570.204.

revitalization or community economic development. The CBDO is responsible for implementing the CDBG-funded activities supported by the Grantee.

Contractors. A contractor is paid with CDBG funds in exchange for a specific service, such as construction. Contractors must be selected through a competitive procurement process.

## **2. What Can CDBG Be Used For?**

### **a. All Eligible Activities Must Meet the CDBG “National Objectives”**

With more than 20 eligible activities, Grantees and CBDOs have great flexibility using CDBG funds. However, CDBG Grantees must demonstrate that every activity for which CDBG funds are used meets at least one of the following “CDBG National Objectives”:

1. Benefits low and moderate income persons
2. Aids in the prevention or elimination of slums or blight, or
3. Meets an “urgent need” that the Grantee is unable to finance.<sup>45</sup>

HUD defines the specific requirements for each of these objectives.<sup>46</sup>

### **b. Eligible Activities**

CDBG funds can be used for housing-related and real property activities, public facilities and services, economic development and to assist CBDOs.<sup>47</sup> As with HOME funds, the Grantee must establish the use of CDBG funds and provide guidelines for spending in its Con Plan. Eligible activities include:

- Housing-related activities<sup>48</sup> include homeownership assistance, the rehabilitation of both rental and homeowner housing, relocation assistance, housing services connected with the HOME program (such as first-time homebuyer education) and lead-based paint testing and abatement.<sup>49</sup>

---

<sup>45</sup> §570.208. The third category—“Urgent Need”—is designated only for activities that alleviate emergency conditions, such as natural disasters. §570.208(c). Urgent need activities must meet all of the following criteria: (1) The existing conditions pose a serious and immediate threat to the health or welfare of the community; (2) The existing conditions must be of recent origin, or must have recently become urgent; (3) The Grantee is unable to finance the activity on its own; and (4) Other sources of funding are not available. *Id.*

<sup>46</sup> §570.208. For more information about the CDBG go to <https://www.hudexchange.info/community-development/> or see the *Guide to National Objectives and Eligible Activities for State CDBG Programs* available at: <https://portal.hud.gov>.

<sup>47</sup> 42 U.S.C. §5305.

<sup>48</sup> 42 U.S.C. §5305(a)(20).

<sup>49</sup> 42 U.S.C. §5305(a)(26).



- Real property activities<sup>50</sup> include activities related to acquisition, disposition, clearance and demolition, code enforcement and historic preservation.

### **Advocacy Tip:**

Advocates have an important role to play in ensuring that federal funds are not used to further segregate and isolate low-income people of color. Jurisdictions may use CDBG and other funds to demolish unpopular developments, which can result in mass displacement unless thoughtful measures are taken to provide replacement housing in high opportunity areas. For more information about jurisdictions' obligation to "affirmatively further fair housing" and requirements for relocation assistance where government funds result in displacement, see Chapters 9 and 16, respectively.

- Public facilities<sup>51</sup> including infrastructure, special needs facilities and community facilities.
- Public services and economic development<sup>52</sup> such as job training and employment services, microenterprise assistance, commercial rehabilitation, health care and substance abuse services, child care, crime prevention and fair housing counseling. Grantees may only use 15% of the CDBG award on these activities.
- Assistance to CBDs<sup>53</sup> for projects related to neighborhood revitalization efforts, community economic development and energy conservation.

### **D. The Emergency Solutions Grants Program**

Emergency Solutions Grants<sup>54</sup> (ESG) can be used for outreach, emergency shelter, homelessness prevention, rapid re-housing assistance, Homeless Management Information System (HMIS), and administrative funds necessary to these activities.<sup>55</sup> Like the HOME and CDBG programs, ESG is provided to state and local government grantees through a formula

---

<sup>50</sup> §570.201(a)–(b).

<sup>51</sup> §570.201(c).

<sup>52</sup> §570.201(e).

<sup>53</sup> 42 U.S.C. §5305(a)(15).

<sup>54</sup> The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 consolidated three McKinney-Vento homeless assistance programs into a single HUD-administered grant program. It also renamed the Emergency Shelter Grants program the Emergency Solutions Grants program to reflect the goal of rapidly moving people from homelessness into permanent housing. 76 FR 75954-01. The law also codified the Continuum of Care planning process, which is designed to facilitate coordinated responses to the needs of people experiencing homelessness.

<sup>55</sup> §576.100 *et seq.*

grant.<sup>56</sup> The Grantees then make the funds available to government agencies or non-profit organizations that are running programs that assist the homeless population.

## 1. Who are the players?

Beneficiaries. ESG is intended for homeless persons in need of basic shelter and supportive services. It is also used to assist people at imminent risk of homelessness. People who live in overcrowded conditions or have received an eviction notice are considered at risk of homelessness.<sup>57</sup>

Entitlement Jurisdictions or ESG Grantees.<sup>58</sup> As with the CDBG formula allocation, ESG is paid directly to Grantees for distribution to entities providing housing and services to the homeless. Grantees may include states, large cities, urban counties and other designated territories. If paid to the state, the state must disburse the funds to applicant jurisdictions.

Non-Profit Organizations. If eligible, private non-profit organizations may apply directly to the state for ESG funds. In addition, UGLGs and other Grantees may distribute all or part of the ESG to non-profit recipients for eligible activities.<sup>59</sup>

Faith-Based Organizations. Religious organizations and other faith-based entities are eligible recipients with comparable standing to other non-profit organizations. No government entity may discriminate against such organizations on the basis of the organization's religious character or affiliation. Each faith-based organization receiving ESG is declared "independent" of the federal, state and local government and is permitted "to carry out its mission."<sup>60</sup> Despite this regulatory authority, however, faith-based organizations are prohibited from using ESG to directly support religious activity such as worship, religious instruction or proselytization. These prohibitions do not prevent the faith-based organization from displaying religious symbols in the space where ESG-funded services are provided.<sup>61</sup>

## 2. What Can ESG Funds Be Used For?

ESG funds can be used to:

- Rehabilitate or remodel a building to be used as a new shelter;

---

<sup>56</sup> §576.3.

<sup>57</sup> §576.2.

<sup>58</sup> §576.301 *et seq.*

<sup>59</sup> §576.25(c).

<sup>60</sup> §576.23(c).

<sup>61</sup> *Id.* See also HUD Notice – CPD 04-10 (issued September 29, 2004), available at: <http://www.hudclips.org/>.

- Pay for operations or maintenance of a homeless facility;
- Provide essential supportive services such as case management, physical and mental health treatment, substance abuse counseling and childcare;
- Provide assistance to help people avoid eviction or foreclosure or to prevent utility shutoffs; and
- Pay for the administration of the ESG program.

Local governments must match ESG funds. For states, the first \$100,000 of the grant need not be matched, and the state must use these savings to assist subrecipients with limited funds.<sup>62</sup>

Otherwise the match must be dollar for dollar and can be obtained from any source except other federal ESG funding. The match can be made from “in-kind” contributions such as the value of a donated building, supplies and equipment, new staff services and volunteer time.<sup>63</sup>

### **E. Housing Opportunities for People with AIDS (HOPWA)**

Housing Opportunities for People with AIDS (HOPWA) is a program designed to help local jurisdictions provide long-term housing opportunities for people living with HIV/AIDS and their families.<sup>64</sup> HOPWA funds can be used for basic shelter and supportive services for homeless persons and to prevent homelessness.

#### **1. Who are the players?**

Beneficiaries. Only low-income people with HIV or AIDS and their families<sup>65</sup> are eligible to receive HOPWA assistance.<sup>66</sup>

State and Local Grantees. HOPWA is made available to state and local government grantees through a formula grant, provided that it is an “eligible state” or “qualifying city,” as defined by regulation.<sup>67</sup> A “Qualifying City” is the unit of government with the highest population in an eligible metropolitan statistical area that has an approved Consolidated Plan.<sup>68</sup> A state is eligible if it has

---

<sup>62</sup> §576.201(a).

<sup>63</sup> §576.201(d).

<sup>64</sup> 42 U.S.C. §12901 *et seq.*; 24 C.F.R. Part 574. The AIDS Housing Opportunities Act is part of the Cranston-Gonzales National Affordable Housing Act of 1990. HOPWA is provided through HUD’s Office of HIV/AIDS Housing.

<sup>65</sup> Family is defined broadly to include “persons living with another person or persons, regardless of actual or perceived sexual orientation, gender identity, or marital status, who are determined to be important to the eligible person or person’s care or well-being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.” 24 C.F.R. §574.3.

<sup>66</sup> §574.3.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at §§574.3, 574.200, 574.210.

more than 1,500 cumulative cases of AIDS in areas outside of qualifying cities and its Consolidated Plan was approved by HUD.<sup>69</sup> Although eligibility is defined by non-metropolitan areas, state HOPWA funds may be used anywhere within the state.

Non-Profit Grantees. Eligible non-profit organizations may also apply for HOPWA funds through a competitive grant program. If its project is of “national significance,”<sup>70</sup> the non-profit may apply directly to HUD for HOPWA funds. In all other cases, a non-profit organization must apply to a grantee. States and local governments that don’t otherwise qualify for funds may apply for HOPWA through the competitive grant program. Only 10% of the annual federal budget allocated for HOPWA may be provided on a competitive basis.

The Consolidated Plan explains how a jurisdiction spends its federal money.

Project Sponsor. A project sponsor is a nonprofit organization or government housing agency that receives HOPWA funds through an eligible grantee.<sup>71</sup>

## **2. What Can HOPWA Funds Be Used For?**

### **a. Used to Prevent Homelessness and Provide Supportive Services**

HOPWA funds can be used in a variety of ways to prevent homelessness: emergency shelter, Single Room Occupancy (SRO) dwellings, shared housing, and for “community residences.”<sup>72</sup> If assisted by HOPWA, housing opportunities must include supportive services as defined below. HOPWA may also be used solely for appropriate supportive services whether or not housing opportunities are provided.

### **b. Eligible Activities**

The following are permitted HOPWA activities provided that they are used to assist eligible beneficiaries:<sup>73</sup>

- Housing Information Services. If provided to help locate, acquire, finance and maintain housing or for counseling, information, fair housing and referral services, among other things.

---

<sup>69</sup> 42 U.S.C. §12903(c).

<sup>70</sup> 42 U.S.C. §12903(c)(3)(C).

<sup>71</sup> §574.3.

<sup>72</sup> Community residence is defined as “a multiunit residence designed for eligible persons to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.” 24 C.F.R. §574.340.

<sup>73</sup> See generally 24 C.F.R. §574.300(b).

- Resource Identification. HOPWA funds may be used for preliminary activities in determining the feasibility of housing-related initiatives.
- Housing and Services. Expenditures for acquisition, rehabilitation, conversion, leasing and repairs to facilities. Operating costs for maintenance, security, furnishings and other incidental costs are also included.
- New Construction. Use of HOPWA funds is limited to new construction of single room occupancy (SROs) dwellings and community residences.
- Rental Assistance for both project-based and tenant-based subsidies, including rental assistance for shared housing arrangements.<sup>74</sup>
- Private Housing and Utility Payments. HOPWA can be used for “short-term” rental, mortgage and utility assistance (for both tenants and homeowners) to prevent homelessness.
- Supportive Services are broadly defined. Examples of eligible supportive services include health, mental health, assessment, permanent housing placement, drug and alcohol treatment and counseling, day care, personal assistance, nutritional services and intensive care if necessary. HOPWA funds may also be used to help eligible persons and their families obtain appropriate public benefits and services. However, health services may only be provided to the eligible individual and not to family members.
- Technical Assistance in establishing and operating community residences.
- Administrative Expenses. HOPWA funds may be used for administrative expenses, however, no more than 3% of the grant may be used for costs related to administering the grant and allocating grant amounts to project sponsors.<sup>75</sup>

#### IV. California's Fiscal Year 2016 Allocations

In 2016, over \$553 million in CDBG, HOME, ESG and HOPWA were allocated by the federal government to California.<sup>76</sup> The amounts allocated to each California Entitlement Jurisdiction for each program are available on HUD's website at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/budget](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/budget).

#### V. The Framework of the Consolidated Plan

HUD requires state and local governments to produce a five-year Con Plan and an Annual Action Plan to receive funds from the five grant programs. The Consolidated Plan is modeled after

---

<sup>74</sup> *Id.* at §574.300(b)(5).

<sup>75</sup> *Id.* at §574.300(b)(1)(i)–(ii). [https://www.hudexchange.info/grantees/cpd-allocations-awards/?filter\\_year=2014&filter\\_program=&filter\\_state=CA&filter\\_coc=](https://www.hudexchange.info/grantees/cpd-allocations-awards/?filter_year=2014&filter_program=&filter_state=CA&filter_coc=).

<sup>76</sup> See spreadsheet of 2016 allocations available at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/about/budget/budget16](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/about/budget/budget16).

California's Housing Element, which is discussed in Part III, Chapter 7. The Con Plan must be adopted every three to five years and it consists of four basic parts: (1) a needs analysis; (2) a housing market analysis; (3) a Strategic Plan, including the Anti-Poverty Strategy, and (4) an Action Plan.<sup>77</sup> The continuing nature of the consolidated planning process provides ample opportunity to influence how federal funds will be spent.

In May 2012, HUD introduced the "eCon Planning Suite," a collection of online tools intended to assist jurisdictions in analyzing housing needs and strategic planning. It includes a mapping tool incorporating basic data about community characteristics that grantees can use to submit maps and data tables with their Con Plan. The template also allows contiguous grantees to jointly submit one needs assessment and strategic plan addressing regional goals. For joint submissions, one grantee must serve as the lead grantee, and each grantee must submit its own individual Annual Action Plan.

### **Advocacy Tip:**

Check your local jurisdiction to confirm its cycle and when its next Consolidated Plan is due. Advocates should participate by providing data about the needs of their community and ensuring that that information used by the local jurisdiction is accurate and reflects the needs of marginalized members of the community including people experiencing homelessness.

### **A. Public Participation**

Public participation is a central element of consolidated planning. HUD regulations require that the jurisdiction encourage participation and adopt a plan that explains its policies and procedures for citizen participation.<sup>78</sup> The regulations explicitly state that "[t]he overall goal of the community planning and development programs covered by [the Con Plan process] is to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities principally for low- and moderate-income persons. The primary means towards this end is to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of affordable housing."<sup>79</sup>

---

<sup>77</sup> The most recently submitted Con Plans for California jurisdiction can be found here: <https://www.hudexchange.info/programs/consolidated-plan/con-plans-aaps-capers/>.

<sup>78</sup> §91.105(a).

<sup>79</sup> §91.1.

Citizen participation is also required during development and adoption of the consolidated annual performance evaluation report (CAPER).

Public participation is key to consolidated planning. Cities and counties must encourage the participation of all citizens, including low-income residents, minorities and non-English speaking persons, persons with disabilities and service providers. Advocates can make public participation more meaningful by working with organizers and community groups to ensure that these members of the community are heard during the planning process. For tips on influencing the planning process, see Part I of this manual.

### 1. Citizen Consultation

Citizen participation is focused on low and moderate-income people, especially those living in substandard and blighted areas and CDBG-funded neighborhoods.<sup>80</sup> Jurisdictions are required to take “whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.”<sup>81</sup> Also, they must consult with local Public Housing Authorities, residents of public and subsidized housing and social service agencies, including fair housing organizations, with information about the needs of low and moderate-income households in the community.<sup>82</sup> In addition, the jurisdiction must provide special attention to homelessness issues by consulting with agencies that provide services to people who are “chronically homeless.”<sup>83</sup>

#### **Advocacy Tip:**

When preparing the Con Plan, the jurisdiction is required to consult with public and private agencies that provide assisted housing, health services, social services and other services to homeless people. Make sure your organization and your partner organizations are on the jurisdiction’s list of organizations to be consulted.

---

<sup>80</sup> §91.105(A)(2)(i).

<sup>81</sup> §91.105(a)(i).

<sup>82</sup> §91.105(a).

<sup>83</sup> §91.100(a)(2). A “chronically homeless person” is defined as an individual who has been continuously homeless for the past year, or had at least four episodes of homelessness in the past three years, having lived on the streets or in emergency shelters. See “Definitions” at §91.5. For the purposes of chronic homelessness, a “disabling condition” is a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions, and limiting an individual’s ability to work or perform one or more activities of daily living. *Id.*



The jurisdiction must also consult with state and local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings when preparing its discussion regarding lead-based paint hazards.<sup>84</sup> This includes compiling data on the addresses of homes in which children have been poisoned by lead. Advocates working in this field can make critical progress in protecting children from lead poisoning by ensuring that lead-based paint issues are addressed in the locality's Consolidated Plan.<sup>85</sup>

**Table 2. Citizen Participation Sample Timeline (Timeline uses start of Program Year (PY) as reference point)**

Timeline	Activity	Con Plan Benchmark	Regulation
6 months before start of PY	Notice of Public Hearing on housing and community development needs	Notice of Public Hearing on housing and community development needs	91.105(e)(2); 91.115 (b)(3)(ii)
5 ½ months before start of PY	Public Hearing on housing and community development needs (if not held earlier)	Public Hearing on housing and community development needs (if not held earlier)	91.105(b)(3) and (e)(1); 91.115(b)(3)
4 months before start of PY	Notice of Comment Period on draft Con Plan/Action Plan - at least 2 weeks prior to start of comment period	Notice of Comment Period on draft Con Plan/Action Plan	91.105(e)(2); 91.115(b)(3)(ii)
3 ½ months before start of PY	Copies of Plan available online, at government offices, etc. for 30-day comment period	Draft Con Plan/Action Plan to public for comment	91.105(b)(2) and (g); 91.115(b)(2) and (f)
2 ½ months before start of PY	End of 30-day comment period on draft Con Plan/Action Plan	End of comment period on draft Con Plan/Action Plan	91.105(b)(4); 91.115(b)(4)
2 ½ months before start of PY	(Recommended: allow 4 weeks for internal review of Plan)	Internal review of Con Plan/Action Plan by grantee. All comments must be addressed in the final Plan; any accepted comments are incorporated into the Action Plan.	
1 ½ months before start of PY	Submission deadline for Action Plan - minimum of 45 days prior to beginning of PY	Con Plan/Action Plan due to HUD	91.15(a)(1)
-	<b>Program Year begins</b>	<b>Plan is approved by HUD</b>	<b>91.500(a)</b>
1 ½ months after start of PY	If Plan is rejected by HUD, grantee must submit revised Plan within 45 days of notice of disapproval	Revised Plan must be submitted if previously disapproved.	91.500(d)
1 ½ months after start of PY	Notice of comment period and public hearing on prior program year's performance reports 2 weeks prior to beginning of comment period (may also include Notice of Hearing on housing and community development needs for the following year)	Notice of hearing and comment period on prior program year's performance reports (may include housing and community development needs)	91.105(e)(2); 91.115 (b)(3)(ii)
2 months after start of PY	Public hearing on performance reports; comment period on performance reports begins (may also include hearing on housing and community development needs)	Public hearing on performance reports; comment period on performance reports begins	91.105(e)(1)
2 ½ months after start of PY	Minimum 15-day comment period on performance reports ends	Minimum 15-day comment period on performance reports ends	91.105(d)(1)
3 months after start of PY	90 days after end of PY	2012-2013 CAPER/PER due to HUD	91.520(a)

<sup>84</sup> §91.105(a)(2)(iv)(3).

<sup>85</sup> For an example of use of HUD funds to address lead poisoning in Los Angeles, see Deepa Fernandes, *Harm at Home: Lead Poisoning of children persists in South Los Angeles*, [KPCC.org](http://www.scpr.org/news/2015/09/23/54126/harm-at-home-lead-poisoning-of-children-persists-i/) (Sept. 23, 2015). Available at: <http://www.scpr.org/news/2015/09/23/54126/harm-at-home-lead-poisoning-of-children-persists-i/>. Notes that the work discussed in the public article was also funded by HUD's Office of Healthy Homes and Lead Hazard Control.



## 2. Citizen Participation Plan

The jurisdiction's public participation efforts must be described in its "citizen participation plan."<sup>86</sup> A sample Citizen Participation Plan is included in this manual as Appendix H.

At a minimum, jurisdictions should hold a series of workshops and public hearings to ensure adequate citizen input. Jurisdictions are expected to explore a variety of techniques that encourage citizen participation and obtain public involvement.<sup>87</sup> Further, the regulations require that the jurisdiction "publish" the Con Plan documents in a way that provides reasonable opportunity to examine the contents and submit comments.<sup>88</sup> For example, the jurisdiction may publish a summary in local newspapers and make copies available at libraries, government offices and public places. The summary must describe the content and purpose of the Con Plan and include a list of location where copies of the entire proposed plan may be examined. Free copies of the Con Plan documents must be provided to citizens and groups requesting the copy.

Jurisdictions should hold a series of workshops and public hearings to ensure adequate citizen input.

Public hearings are mandatory. The jurisdiction must provide at least one public hearing during the development of the Con Plan.<sup>89</sup> In addition, it must hold at least two public hearings per year to obtain citizens' views and to respond to proposals and questions about the Con Plan, subsequent reports or amendments. At least one of these hearing must be held before the proposed Con Plan is published for comment.

The citizen participation plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries.<sup>90</sup> It must make accommodations for people with disabilities and describe in its plan how it will meet these requirements.<sup>91</sup> The regulations provide additional instruction with regard to the public hearings, meetings, publication and access to records used to develop the Con Plan. Significantly, the jurisdiction must:

1. Provide technical assistance to representatives of low-income persons;
2. Provide written responses to comments made on the Con Plan; and

---

<sup>86</sup> §91.105.

<sup>87</sup> §91.105.

<sup>88</sup> §91.105(b).

<sup>89</sup> §91.105(b)(3).

<sup>90</sup> U.S. Department of Housing and Urban Development – Office of Community Planning and Development, Guidelines for Preparing a Consolidated Plan Submission for Local Jurisdictions, at p. 7, available at: <http://www.hud.gov/offices/cpd/about/conplan/toolsandguidance/guidance/>.

<sup>91</sup> *Id.*

3. Establish a complaint process for handling complaints made about the Consolidated Plan.<sup>92</sup>

Legal services attorneys and community advocates play an essential role in the citizen participation process. In addition to helping the jurisdiction comply with consolidated planning law, we can provide essential information regarding the housing, jobs and educational needs of our clients. Legal services programs can provide information on the number of evictions in the community each year, the reasons for most of the evictions and whether clients become homeless after being evicted. We can also provide information on a variety of issues, including the affordability and habitability of available housing, the effectiveness of code enforcement, domestic violence issues and the adequacy of the “safety net” for our clients. Our community organizer partners can help mobilize low-income people to attend public meetings and speak directly about these issues. This participation and information is necessary for the proper development of the Con Plan.

Advocates should ensure that that all of the Con Plan documents are accessible to their clients and community. It is not sufficient to publish the summary in one local newspaper or in one language, or to provide the Con Plan online when many of our clients do not read newspapers or have access to computers. Solutions to wider publication may include posting fliers at appropriate service agencies, targeted mailings to public housing residents and other interested parties and utilizing street sheets and other community-based newspapers.

## **B. The Draft Con Plan**

The jurisdiction must develop a Draft Consolidated Plan for public comment before adopting the final version it submits to HUD. The draft Con Plan must include the following:

### **1. Housing Needs in the Community**

To develop its Consolidated Plan, the jurisdiction must first undertake the workshops and public hearings discussed above to identify community needs. Using this information, the Con Plan must describe the jurisdiction's estimated housing needs for the upcoming five years.<sup>93</sup> In particular, the jurisdiction must analyze the number and types of families in need of housing assistance in specific groups including:

- Extremely low-income, low-income, moderate-income and middle-income households;
- Renters and homeowners;

---

<sup>92</sup> See *generally* §91.105.

<sup>93</sup> §91.205(a).

- Elderly persons;
- Single persons;
- Large families;
- Public housing residents;
- Families on the Section 8 and public housing waiting lists;
- Persons with HIV/AIDS and their families;
- Victims of domestic violence, dating violence, sexual assault, and stalking;
- People with disabilities;
- And formerly homeless people nearing the end of rapid rehousing assistance.<sup>94</sup>

### **What is low-income?**

Advocates should be aware of the different terminology used in federal and state law. Under federal guidelines, extremely low-income families earn between 0% and 30% of Area Median Income (AMI),<sup>95</sup> very low-income families earn less than 50% of AMI, low-income families earn between 50% and 80% of AMI and middle-income families earn between 80% and 95% of AMI. Each of these categories is adjusted for family size.<sup>96</sup>

## **2. Homelessness**

HUD regulations require jurisdictions to take significant steps to address homelessness, especially chronic homelessness, in their communities.<sup>97</sup> First, the Con Plan must describe the nature and extent of homelessness (including rural homelessness) using data from the Homeless Management Information System (HMIS) and Point in Time counts conducted according to HUD guidelines.<sup>98</sup> The description must address the need for facilities and services for specific categories of people, including veterans and unaccompanied youth, and describe the race and ethnicity of people experiencing homelessness.<sup>99</sup>

The jurisdiction must also assess the unmet need for shelter for different subpopulations including the characteristics and needs of lower income individuals and families with children who are currently housed but threatened with homelessness. Jurisdictions are required to specifically address the characteristic and needs of extremely low-income households when preparing this part of the Con Plan.

---

<sup>94</sup> §91.205(b).

<sup>95</sup> See fn. 8 for the full definition of Area Median Income.

<sup>96</sup> For more information, see 42 U.S.C. §12704; 24 C.F.R. §91.5.

<sup>97</sup> See fn. 82, *supra*, for HUD's definition of chronically homeless.

<sup>98</sup> For more information about the Point in Time count, see Chapter 15.

<sup>99</sup> §91.205(c).

### 3. Other Special Needs

The jurisdiction must estimate the number of persons who are not homeless but require supportive housing, such as seniors, people with disabilities and/or addiction, people with HIV/AIDS and their families and public housing residents. In addition, the jurisdiction should identify any other special needs populations in its community and describe their supportive housing needs. Additional information regarding the population with HIV/AIDS and their families is required if the jurisdiction seeks HOPWA funding.<sup>100</sup>

### 4. Domestic Violence Issues

Pursuant to the Violence Against Women Act (VAWA), jurisdictions must address the housing needs of victims of domestic violence, dating violence and stalking.<sup>101</sup>

### 5. Lead Based Paint

The plan must estimate the number of housing units within the jurisdiction that are occupied by lower income families that contain lead-based paint.<sup>102</sup> To develop its data, the jurisdiction must consult with state and local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings.<sup>103</sup> These efforts include compiling data on the addresses of homes where children have been poisoned by lead.<sup>104</sup>

#### **Advocacy Tip:**

Since HUD requires that jurisdictions consult with public and private agencies that provide housing, health and social services during preparation of the Con Plan, advocates should encourage the jurisdiction to address all of the health issues (in addition to lead-based paint) which may be present in its housing stock, including mold and mildew, radon poisoning and infestation.<sup>105</sup>

---

<sup>100</sup> §91.205(d).

<sup>101</sup> 42 U.S.C. §12705(b)(1). For more information about VAWA and protections victims of domestic violence, sexual assault, and trafficking, see National Housing Law Project's manual *Housing Rights of Domestic Violence survivors*, available at: <http://nhlp.org/OVWgrantees>.

<sup>102</sup> §91.205(e). See 24 C.F.R. Part 35 Subpart B for definition of lead-based paint hazards.

<sup>103</sup> §91.100(1)(2).

<sup>104</sup> *Id.*

<sup>105</sup> §91.100(a).

## 6. Housing Market Analysis

The jurisdiction should also describe the significant characteristics of its housing market, including information about the supply, demand, condition and cost of housing in the jurisdiction. It must specifically address the availability of housing for people with disabilities as well as the available housing stock for other low-income households with special needs.<sup>106</sup> The plan must identify areas with concentrations of racial/ethnic minorities or low-income people and how it classified this information, using narrative or maps.

### **Advocacy Tip:**

Mapping tools and data<sup>107</sup> are important tools to further affirmative housing goals in your community. Advocates should ensure that housing segregation issues are described in the needs assessment and that plans to affirmatively further fair housing address the community's needs.

### **a. Subsidized Units**

The housing market analysis must include the number of housing units in the community that are assisted by local, state or federal funds.<sup>108</sup> The jurisdiction must assess the impending loss of any of these units for any reason, including the expiration of Section 8 project-based contracts or the loss of Section 8 tenant-based vouchers.<sup>109</sup>

### **b. Public Housing**

The jurisdiction must also include information about public housing in the jurisdiction, including the number of units, their physical condition, and restoration needs. The Con Plan must include the results from its Section 504 needs assessment<sup>110</sup> and its strategy for improving the quality of

---

<sup>106</sup> §91.210.

<sup>107</sup> Visit PolicyLink's Equity Atlas at <http://nationalequityatlas.org/> for data and mapping tools.

<sup>108</sup> §91.210(b)(2).

<sup>109</sup> Information about the loss of Section 8 project-based contracts and vouchers is available from the National Low Income Housing Coalition (<http://nlihc.org/>); the National Housing Trust (<http://www.nhtinc.org/>); the National Housing Law Project (<http://www.nhlp.org/>) and the Center for Budget and Policy Priorities (<http://www.cbpp.org/>).

<sup>110</sup> For more information about Section 504, visit [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opportunity/disabilities/504keys](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opportunity/disabilities/504keys).

living environment for residents in public housing developments.<sup>111</sup> See Chapter 12 for information about the PHA Plan.

### **c. Special Need Facilities and Services**

The Con Plan must describe the existing facilities and services that assist non-homeless persons in need of supportive housing and other services.<sup>112</sup> The jurisdiction must also identify programs for ensuring that persons returning to the community from mental and physical health institutions receive the appropriate supportive housing for successful reentry to the community.

#### **Advocacy Tip:**

While the local jurisdiction may be able to obtain some information from local realtors and the Chamber of Commerce, legal services providers and housing advocates can provide more comprehensive data that specifically relates to the needs of lower income households. For example, information about the number and reason for evictions or subsidy terminations, fair housing complaints and statistics about uninhabitable units is invaluable to the development of the Con Plan.

## **7. Barriers to Affordable Housing**

The Con Plan must explain whether public policy is reducing incentives to develop, improve or maintain affordable housing or increasing the cost of housing.<sup>113</sup> Particular focus should be directed to the jurisdiction's local policies, including taxing policies that affect land and other property. Other obstacles may include land use controls, zoning ordinances, building codes, permit and development fees, growth limitations and policies that affect real estate investment.

---

<sup>111</sup> §91.210(b). Additional information about public housing is available from the National Low Income Housing Coalition (<http://nlihc.org/>); the National Housing Law Project (<http://www.nhlp.org/>) and ENPHRONT (Everywhere and Now Public Housing Residents Organizing Nationally Together), <http://www.enphront.com/>.

<sup>112</sup> §91.210(d).

<sup>113</sup> §92.210(e).

### What should be covered in the Housing Market Analysis?

The lists below can be used to think through problem areas that should be brought to the attention of your jurisdiction. Advocates can work with community organizations to identify key areas of need to ensure that they are addressed in the Con Plan.

#### General Characteristics – Housing Market

1. Who lives in the housing?
  - a. Is it mostly occupied by owners? By renters?
  - b. Is it mostly single family homes or multi-family?
  - c. If multi-family, are the units mostly apartments, condominiums and other housing types typically owned by the occupants?
  - d. Are commercial buildings being used for housing purposes?
  - e. Are certain racial/ethnic groups segregated from others?
2. Is the current housing adequate?
  - a. Is new housing being developed? If so, who is the housing being built for?
  - b. Are there racial/ethnic groups with a disproportionately greater need for housing?
  - c. Are there enough single room occupancy (SROs) units or studio apartments?
  - d. Housing with three and four bedrooms for large families?
  - e. Senior housing?
  - f. Supportive or transitional housing for
    - i. Homeless individuals and families?
    - ii. People with disabilities?
    - iii. Emancipated foster youth?
  - g. Emergency shelters for
    - i. Families?
    - ii. Single men and women?
    - iii. Youth under 18 years of age who are separated from their families or youth 18 years or older who are leaving the foster care system?
    - iv. Survivors of domestic violence situations? Are male children prohibited from staying at domestic violence shelters?
    - v. Are conditions, such as religious participation, placed on residents staying in emergency shelters?
  - h. Affordable housing near transit opportunities?
3. Are there programs to assist people returning to the community from:
  - a. Prison?
  - b. Mental and physical institutions?
  - c. Foster care?
4. What is the condition of the housing?
  - a. Is it old or new? If the housing was built before 1977, does the jurisdiction address applicable lead-based paint issues?
  - b. Are there other health hazards in the existing housing, such as mold and mildew and other habitability issues?
  - c. Are there adequate parking spaces for the residents?
  - d. Is the housing safe from crime?
  - e. Is code enforcement effective? Does it respond timely, or at all, to tenant's complaints? Is code enforcement used to unnecessarily displace tenants?
5. Are there local policies impeding the development of affordable housing?

### General Characteristics – Market Trends

1. Rental Housing:
  - a. Are rents rising? What is the rate of increase?<sup>114</sup>
  - b. Are rental units being lost?
  - c. Is there a high number of absentee or corporate landlords?
2. Ownership Housing:
  - a. Are sales prices increasing or decreasing?
  - b. Are there a high number of foreclosures? Why?
  - c. Are homeowners able to obtain conventional prime mortgages? Or are they forced to get non-traditional or subprime loans?
3. Housing Occupancy:
  - a. Are households “cost burdened,” paying more than 30% of their income for housing costs and utilities?<sup>115</sup>
  - b. Are households “over-crowded”?<sup>116</sup>
  - c. What is the vacancy rate? What is the “healthy” vacancy rate for that community?
4. Is gentrification an issue?
  - a. Where are the traditionally lower-income neighborhoods?
  - b. Are these neighborhoods still available for low income residents?
  - c. Are higher income people moving into the neighborhood?
  - d. Are lower income people being displaced?
  - e. Are new homeowners purchasing rental units, resulting in the eviction of current renting residents?
  - f. Are rental and housing prices increasing in a traditionally low-income neighborhood?
5. Is the community racially segregated?
6. Is blight an issue?
  - a. Are buildings becoming more rundown and/or vacant?
  - b. Are there decreased banking services? Increased payday loan businesses?
  - c. Are there adequate schools, parks and services for the neighborhood?

---

<sup>114</sup> According to the Legislative Analyst Office's March 2015 report, California's housing prices are rising fast; average home prices in California are two and a half times the national average while rent is 50% higher. *California's High Housing Costs: Causes and Consequences* available at: <http://www.lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>.

<sup>115</sup> Under HUD Con Plan regulations, “cost burden” is established when a family's gross housing cost, including utilities, exceeds 30% of their gross income. According to the California Housing Partnership Corporation's April 2016 report *Confronting California's Rent and Poverty Crisis: a Call for State Reinvestment in Affordable Housing*, 80% of extremely low income and 51% of very low income families pay more than 50% of their income for rent. Report available at: <http://chpc.net/about-us/mission/>.

<sup>116</sup> “Over-crowding” occurs when a housing unit contains more than one person per room.” See §91.5; see also 24 C.F.R. §791.402(b).



### C. The Strategic Plan

The Strategic Plan is a key part of the Consolidated Plan. It summarizes the jurisdiction's "priority needs" for spending its federal CPD funds.<sup>117</sup> The Strategic Plan is used to rationalize the chosen priorities and describe the specific objectives (with an estimated timetable) the jurisdiction intends to meet for lower income families. The strategic plan must also identify any obstacles to meeting underserved needs in the community. Plan objectives and timelines must be included in the Strategic Plan.<sup>118</sup>

Grantees must use the tables in the IDIS system to describe priorities for specified categories. The regulations specify what information must be included under each subcategory:

1. Affordable Housing;
2. Public Housing;
3. Homelessness;
  - a. Must describe the jurisdiction's strategy for reducing and ending homelessness. Allocations must be based on reliable data from Homeless Needs Assessment, which incorporates public comment.
4. Other Special Needs;
  - a. Must summarize the needs of people who may require supportive housing, including people with disabilities and people with drug or alcohol addiction, among others.
5. Non-housing Community Development;<sup>119</sup>
6. Neighborhood Revitalization;
7. Barriers to Affordable Housing;
8. Lead-Based Paint Hazards; and
9. Anti-Poverty Strategy.

The Strategic Plan then indicates what populations will be served by each activity identified by demographic characteristics and special needs. The jurisdiction must also describe what geographic target areas have this need, and goals for meeting the need. Each need is assigned high or low priority and explain the rationale for each categorization.

---

<sup>117</sup> §91.215.

<sup>118</sup> *Id.*

<sup>119</sup> §§91.215(a)(2), 91.315(a)(2), 91.415.

Charts in the IDIS system for setting priorities look like this:

### SP-28 Priority Needs Summary

[Previous Page](#)

Name	Population	Geographic Areas	Priority Level	Associated Goals
Chronic Homelessness	Chronic Homelessness Mentally Ill Chronic Substance Abuse Extremely Low veterans		High	Rapid Re-Housing
Homeless Prevention	Extremely Low Other Large Families Families with Children		High	Homeless Prevention
Neighborhood Stabilization	Extremely Low Other Non-housing Community Development Low Moderate	Bandera Estates-Local Target area Bruni & Oilton-Local Target area	High	Acquisition-Rehabilitation of Distressed Property
Job Training	Families with Children Moderate Individuals Low Extremely Low		High	Job Training

The Strategic Plan also describes how funding allocation addresses the housing market conditions and needs of extremely low and low-income families and homeless persons, including the number of people who will be provided housing in a specific time period.<sup>120</sup> It also addresses public housing needs, supportive housing needs, and the needs of people who are homeless or at risk of homelessness. Finally jurisdictions must address how any CDBG funds planned for non-housing needs address the goal of developing viable urban communities and expanding economic opportunities for low-income people.<sup>121</sup> Again, it is critical for advocates to ensure that the interests of low-income people in the communities are represented in the planning process.

HUD requires that jurisdictions use U.S. Census data incorporated into its IDIS system.<sup>122</sup>

Jurisdictions should update the CHAS data in IDIS based on their own local studies and other reliable sources of information. If the jurisdiction finds that any racial or ethnic group has a disproportionately greater need in comparison to the needs of that income category as a whole, the jurisdiction must complete an assessment of that specific need.<sup>123</sup>

<sup>120</sup> §91.215(b).

<sup>121</sup> §91.215(f).

<sup>122</sup> See <http://socds.huduser.org/scripts/odbic.exe/chas/index.htm>.

<sup>123</sup> U.S. Department of Housing and Urban Development – Office of Community Planning and Development, Guidelines for Preparing a Consolidated Plan Submission for Local Jurisdictions, at p. 13, available at: <http://www.hud.gov/offices/cpd/about/conplan/toolsandguidance/guidance/>.

#### **D. The Annual Action Plan**

The Annual Action Plan describes the activities and programs that the jurisdiction will carry out in the upcoming year.<sup>124</sup> Like the Con Plan and Strategic Plan, jurisdictions submit the Annual Action Plan using the IDIS system. The Annual Action Plan must follow logically from the Strategic Plan. The Consolidated Plan may contain the first Annual Action Plan and the jurisdiction is required to submit a new Annual Action Plan in each subsequent year of the five-year planning period.

The Annual Action Plan must identify how federal funds will be used for the specific objectives in the Strategic Plan for the upcoming year. The federal funds to be addressed include Section 8 funds, Low Income Housing Tax Credits, McKinney-Vento Homeless Assistance Act funds as well as any other federal resources.<sup>125</sup> The jurisdiction is also required to identify resources from private, state and local sources that can be reasonably expected to be available to meet the priority objectives.

The Annual Action Plan describes activities the jurisdiction will undertake to address the Strategic Plan's priority needs and objectives. It must estimate the number and type of families that will benefit from each proposed activity, what the jurisdiction hopes to accomplish and a target date for completion of the activity.<sup>126</sup> It must also identify any obstacles for addressing underserved needs and the reasons for allocating attention to the specific priorities. In addition, the jurisdiction must identify the geographic areas that will get assistance that year and estimate a percentage of funds that is planned to be dedicated to these target areas.<sup>127</sup>

The Annual Action Plan must also specify the following:

- **Affordable Housing.** The one-year goals for providing affordable housing, including the number of homeless, non-homeless and special-needs households that will be provided for by using available funds and the number of households that will be provided for through rental assistance, new production, rehabilitation or acquisition efforts.<sup>128</sup>
- **Public Housing.** Actions it plans to take during the upcoming year to address the needs of public housing and to encourage public housing residents to become more involved in management and participate in homeownership. If HUD has designated the public

---

<sup>124</sup> §91.220.

<sup>125</sup> *Id.*

<sup>126</sup> §91.220(d).

<sup>127</sup> §91.220(f).

<sup>128</sup> §91.220(g).

housing agency as “troubled,” the jurisdiction must specify additional efforts to assist the housing authority to cure the “troubled” designation.<sup>129</sup>

- Homeless and Special Needs Populations. Activities that it plans to undertake in the upcoming year to address shelter and transitional housing needs of homeless individuals and families, to prevent others from becoming homeless and to address the special needs of persons who are not homeless as identified in the Strategic Plan.<sup>130</sup>
- Barriers to Affordable Housing and Meeting Underserved Needs. Actions it plans to take during the next year to remove or mitigate the barriers to affordable housing, as identified in the Consolidated Plan.<sup>131</sup> Among other things, the Annual Action Plan must also identify actions it plans to take that year to meet underserved needs, provide incentive for affordable housing and reduce lead-based paint hazards and the number of families living in poverty.<sup>132</sup>
- Program Specific Requirements. Describe with specificity how it will use its CDBG, HOME and HOPWA funds.<sup>133</sup> The regulations set forth specific requirements for each of these program funds.<sup>134</sup>

#### **E. Certifications and Sub-Plans**

The jurisdiction is required to make a number of certifications that it has adopted policies to address various issues.<sup>135</sup> The jurisdiction must certify that it has a policy for accommodating people coming from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correctional programs and institutions).<sup>136</sup> Such policies serve to prevent increased homelessness among these populations.

The jurisdiction must also certify that it has adopted additional “plans” to comply with the consolidated planning process.<sup>137</sup> Some of the plans are automatically required, such as the Anti-Displacement and Relocation Plan, while other plans are dependent on the type of funding received by the jurisdiction. The significant “Sub-Plans” and certifications are addressed in this manual:

---

<sup>129</sup> §91.220(h). For more information about “troubled housing authorities,” see Chapter 12.

<sup>130</sup> §91.220(i).

<sup>131</sup> §91.220(j).

<sup>132</sup> §91.220(k).

<sup>133</sup> §91.220(l).

<sup>134</sup> *Id.*

<sup>135</sup> §91.225. See *also* CPD Notice 07-14, HUD Procedures for Rejecting a Participating Jurisdiction's Consolidated Plan/Action Plan HOME Certification(s) available at <http://www.hudclips.org/>, describing the three HOME certifications that must be made to HUD, the review requirements to be undertaken by HUD and the grounds, if any, for disapproval of the certifications.

<sup>136</sup> §91.225(c)(10).

<sup>137</sup> §91.225.

- Assessment of Fair Housing (formerly called the Analysis of Impediment to Affirmatively Further Fair Housing Choice), see Chapter 15
- Anti-Displacement and Relocation Plan, see Chapter 9
- Compliance with Section 3 Requirements, see Chapter 13
- Continuum of Care, see Chapter 14

**Advocacy Tip:**

The Consolidated Plan should be carefully reviewed to ensure that the certifications made by the jurisdiction are meaningful, supported by evidence, and in compliance with the regulations. Each of these sub-plans must be examined for consistency with the Consolidated Plan and to ensure that they adequately identify and meet the needs of our clients.

**F. The Final Consolidated Plan**

After the jurisdiction has created the Draft Con Plan and received input from the public, it then submits the final Con Plan to HUD through IDIS. As part of the final Con Plan, the jurisdiction must attach a summary of comments received through the public participation process, explaining why it has not adopted suggested change to the Con Plan.<sup>138</sup> HUD staff responsible for that jurisdiction uses a checklist to review the Con Plan.<sup>139</sup>

HUD is required to review the Plan upon receipt. It is authorized to disapprove the Con Plan if it fails to comply with applicable law. For example, HUD is authorized to disapprove a Con Plan for failure to follow citizen participation requirements, lacking required elements under the regulations, or failing to make accurate certifications.<sup>140</sup> If the Plan is rejected, the jurisdiction may change the Plan and resubmit it with 45 days of first notification of disapproval. If HUD takes no action within 45 days, the Plan is deemed approved.<sup>141</sup>

**G. Con Plan Amendments**

The criteria for amending the Con Plan must be stated in the jurisdiction's Citizen Participation Plan.<sup>142</sup> The Con Plan must be amended if there are any substantial changes in priorities, funding

---

<sup>138</sup> §91.105(b)(5).

<sup>139</sup> See Appendix I for the HUD Checklist for reviewing the final Con Plan.

<sup>140</sup> §91.500.

<sup>141</sup> §91.500(a).

<sup>142</sup> §91.105(c).

methods or activities.<sup>143</sup> For example, amendments are required if the jurisdiction proposes a change in the use of CDBG funds from one eligible activity to another activity. Similarly, the Con Plan must be amended if there is a change in the purpose, scope, location or beneficiaries of an activity.<sup>144</sup>

Public participation requirements are similar for Con Plan Amendments, requiring citizen review and comment opportunities and public hearings.<sup>145</sup> The jurisdiction must attach a summary of the comments and its rationale for not accepting any suggested changes. The jurisdiction must notify HUD that it has made an amendment to its Con Plan and submit such amendments at the end of the program year.<sup>146</sup>

#### **H. Consolidated Annual Performance Evaluation Report (CAPER)**<sup>147</sup>

Each year, the jurisdiction must report on its performance, demonstrating to HUD that it actually complied with its Consolidated Plan and Annual Action Plan in the past year.<sup>148</sup> The CAPER is submitted through the IDIS system and must include a description of:

- what money was made available;
- how and where the money was spent; and
- the number, income, and racial characteristics of families and individuals that were assisted with the money.<sup>149</sup>

The CAPER should also include an evaluation of the jurisdiction's progress toward meeting its affordable housing objectives and how it has used any HOME, HTF, ESG, CDBG or HOPWA funds it received.<sup>150</sup> It must also describe its progress towards reducing and ending homelessness. See Appendix J for the HUD checklist for reviewing a CAPER.

---

<sup>143</sup> *Id.*; §91.505(a).

<sup>144</sup> §91.505(a)(3).

<sup>145</sup> §91.105(c)(2) and (3).

<sup>146</sup> §91.505(c).

<sup>147</sup> CAPER is pronounced "cāpěr."

<sup>148</sup> §91.520.

<sup>149</sup> §91.520(b)–(e).

<sup>150</sup> *Id.*

The IDIS system prepopulates CAPER tables using outcomes that were included in the Annual Action Plan. This allows jurisdictions to show progress towards stated goals. For example:

**Table 1 - Accomplishments - Program Year**

Goal	Category	Funding		Outcome			
		Source	Amount	Indicator	Expected	Actual	Unit of Measure
goal 1	Affordable Housing Public Housing Homeless Non-Homeless Special Needs Non-Housing Community Development	CDBG	2500000	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit	400	100	Persons Assisted
				Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit	400	0	Households Assisted
				Public service activities for Low/Moderate Income Housing Benefit	580	235	Households Assisted
				Facade treatment/business building rehabilitation	111	45	Business
				Homeowner Housing Added	1500	1600	Household Housing Unit
				Homeowner Housing Rehabilitated	1500	1462	Household Housing Unit
				Direct Financial Assistance to Homebuyers	2450	3521	Households Assisted

The public participation requirements described in Section V.A. above apply to the jurisdiction's adoption of its CAPER.<sup>151</sup> The CAPER must be submitted to HUD for review within 90 days after the close of the jurisdiction's program year.<sup>152</sup> HUD is mandated to review the legal compliance of the CAPER annually. If it finds that the CAPER unsatisfactory, or if the CAPER is submitted past its deadline, HUD has the authority to withdraw or reallocate the jurisdiction's federal funding after notice and a hearing.<sup>153</sup>

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

<sup>151</sup> §91.105(d).

<sup>152</sup> §91.520(a).

<sup>153</sup> §91.505(a), (f).

## Chapter 12: Public Housing Authority Plans



## 12. Public Housing Authority Plans<sup>1</sup>

### I. Introduction to Public Housing Plans

#### A. Overview and Purpose

Public Housing Agencies (PHAs) are required to develop Five-Year and Annual Plans for administration of public housing and the Section 8 program. Both plans are submitted to and approved by the Department of Housing and Urban Development (HUD).<sup>2</sup> Small PHAs and “high performing” PHAs may use a streamlined planning process.<sup>3</sup> In 2015, the PHA planning process was amended to add requirements related to a housing authority’s fair housing responsibilities, including the duty to “affirmatively further fair housing” and incorporating the new “Assessment of Fair Housing” into the planning process.<sup>4</sup> (See Chapter 15 for detailed discussion of the Assessment of Fair Housing.)

The PHA plan process makes PHAs accountable to participants in the public housing and voucher programs, and accountable to the public. Specifically, it requires PHAs to create and seek comments from Resident Advisory Boards (RABs) and requires that the public have an opportunity to review and comment on the PHA plan through a public hearing. Encouraging your clients to participate in the planning process, submitting written comments, and testifying at public hearings are effective ways to ensure that your local PHA’s policies address community needs.

---

<sup>1</sup> Many thanks to the National Housing Law Project for undertaking the first draft of this Chapter.

<sup>2</sup> 42 U.S.C. §1437c–1.

<sup>3</sup> 24 C.F.R. §903.11(a). Federal regulations set the standards used for determining whether a PHA is a high performer, standard, substandard, or troubled. Performance designations are based on the condition of the housing, the financial status of the PHA, and an assessment of the PHA’s management. Small PHAs are those that have less than 250 units of public housing, and must not be designated as “troubled” in order to qualify for streamlined planning. 24 C.F.R. §902.11.

<sup>4</sup> Affirmatively Furthering Fair Housing, 80 FR 42272-01 (July 16, 2015). Among other things, the rule replaced the “Analysis of Impediments” to fair housing with the “Assessment of Fair Housing.” The rule attempts to strengthen fair housing requirements and make a more meaningful analysis of barriers to achieving fair housing goals. Ben Carson, Donald Trump’s nominee for HUD secretary, has publicly stated that the affirmatively furthering fair housing requirement is “social engineering” and the future of the rule and HUD’s willingness to enforce it is unclear. For further discussion of the Assessment of Fair Housing and the Affirmatively Furthering Fair Housing Rule, see Chapter 15.

## **B. Legal Overview and Structure of the Plan Process**

Both the PHA Plan and the Annual Plan address discretionary policies that the PHA intends to adopt. The plans must be submitted to HUD 75 days before the end of the PHA's fiscal year.<sup>5</sup> The PHA must give the public a 45-day notice of the hearing on the plan and conduct the hearing in a location convenient to people served by the PHA.<sup>6</sup> The plan and its attachments must be made available to the public 45 days before the hearing.<sup>7</sup> HUD urges PHAs to begin consulting with the Resident Advisory Board six months prior to the date that the plan must be submitted to HUD.<sup>8</sup> See Appendix M for a PHA Plan Timeline.

The Resident Advisory Board plays an essential role in the PHA Plan process. The RAB is made up of people assisted by the PHA's housing programs. There are specific rules governing how a RAB is formed and its membership.<sup>9</sup> The RAB makes recommendations regarding development of PHA plans and the PHA must respond to the RAB's comments on the Five-Year and Annual Plans. The PHA must respond to a RAB's comments, and the PHA must submit the RAB's comments and the PHA's responses to HUD. A list of the names of RAB members is also a required attachment to the PHA Annual plan.<sup>10</sup>

The Resident Advisory Board (RAB) plays an essential role in the PHA Plan process.

HUD created a PHA Plan template for the Five-Year and Annual Plans,<sup>11</sup> which PHAs primarily fill out by checking boxes. When first reading these plans, they are hard to understand because of the lack of a narrative. The PHA plans are best understood when read with the supporting documents, such as the Section 8 Administrative Plan and the Public Housing Admission and Continued Occupancy Plan (ACOP). The Section 8 Administrative Plan and the ACOP are discussed in later sections of this manual.

HUD reviews PHA plans to determine if the plan contains the required information, is consistent with information available to HUD, is consistent with the applicable Consolidated Plan and not prohibited by any applicable law.<sup>12</sup> (Consolidated Plans are discussed in Chapter 11). The scope

<sup>5</sup> 24 C.F.R. §903.5 A PHA's fiscal year is stated on each of the PHA's Annual Plans, which are available at: <http://www.hud.gov/offices/pih/pha/index.cfm>.

<sup>6</sup> 24 C.F.R. §903.17(a)–(b).

<sup>7</sup> 24 C.F.R. §903.17(b).

<sup>8</sup> PHA Plan Desk Guide, Chapter 2.5, available at: <http://www.hud.gov/offices/pih/pha/policy/pha-plan-guide.pdf>.

<sup>9</sup> 24 C.F.R. §903.13.

<sup>10</sup> PHA Plan Desk Guide, Chapter 3.22, *supra* note 4.

<sup>11</sup> PHA Plans, HUD form 50075 (PHA Plans Template), available at: [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/pha](https://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/pha).

<sup>12</sup> 24 C.F.R. §903.23; 42 U.S.C. §1437c–1(i).

of HUD's review is limited to deconcentration policies and other policies on eligibility and admission, capital improvements, demolition/disposition, the PHA's civil rights certification, and any other element of the plan that is challenged.<sup>13</sup> The civil rights certification incorporates a statement that the Housing Authority will "affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH . . . that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing, and that it will address fair housing issues and contributing factors in its programs."<sup>14</sup> It also requires that the PHA Plan be consistent with any Assessment of Fair Housing that the PHA submits, either jointly or in collaboration with another government agency.<sup>15</sup>

Despite the otherwise limited scope of HUD's review, the civil rights certification is subject to challenge if the PHA fails to meet affirmatively furthering fair housing or other civil rights requirements.<sup>16</sup> If HUD challenges the PHA's certification, it will provide written notice of the specific deficiencies, and give the PHA opportunity to respond.<sup>17</sup> The PHA must then establish that it has complied with fair housing and civil rights laws or remedied violations, and establish that the PHA has taken actions to affirmatively further fair housing. HUD may accept the PHA's explanation and withdraw the challenge or pursue further investigation and other legal remedies.<sup>18</sup>

The public also has the opportunity to review the PHA Plan. Each PHA is required to certify that the Five-Year and Annual Plans were made available for review along with all required attachments and supporting documents at the main office of the PHA.<sup>19</sup>

---

<sup>13</sup> 24 C.F.R. §903.23(b); *citing* 24 C.F.R §903.7, and limiting review to §903.7 subsections (b), (g), (h) and (o).

<sup>14</sup> 24 C.F.R. §903.7(o)(1); Affirmatively Furthering Fair Housing, 80 FR 42272-01 (August 17, 2014).

<sup>15</sup> 24 C.F.R. §903.15 (August 17, 2015).

<sup>16</sup> 24 C.F.R. §903.15(d)(3).

<sup>17</sup> 24 C.F.R. §903.15(d)(2)(iii).

<sup>18</sup> 24 C.F.R. §903.15(d)(3)(ii).

<sup>19</sup> 24 C.F.R. §§903.17(b)(1), 903.23(e).

### **How to Obtain a Copy of the Five-Year Plan and Annual Plan**

Your local PHA must certify that its Five-Year Plan and its Annual Plans are available for review in the PHA's main office. It must also have all required attachments and supporting documents available for review. Some PHAs post their plans on their own web sites or they may be posted on the website of the local jurisdiction, typically the city or county. The Five-Year and Annual Plan are posted on the HUD web site at <http://www.hud.gov/offices/pih/pha/>. If the Plans cannot be located from these sources, they can be obtained from HUD or the local PHA through submission of a FOIA or public records act request. For more information about these public information laws, see Chapter 6.

## **II. Five-Year and Annual Plans**

### **A. Five-Year Plan**

The Five-Year Plan must be revised and submitted to HUD every five years. It contains (1) the mission of the PHA, (2) its long-term goals and objectives stated in quantifiable terms, (3) goals and programs that the PHA will undertake to serve the needs of victims of domestic violence, dating violence, sexual assault, or stalking, and (4) the progress the PHA has made towards the goals stated in its previous Five-Year Plan.<sup>20</sup>

### **B. Annual Plan**

The Annual Plan must provide information about 18 mandatory elements.<sup>21</sup> The Annual Plan checklist in Appendix K can be used to document the status of your local PHA and to determine whether each of the Annual Plan elements is addressed. In addition to the mandatory elements, the PHA Annual Plan should include information about the PHA's progress in meeting the goals in its five-year plan and criteria for determining whether there has been a substantial deviation from the Five-Year plan.<sup>22</sup>

The content of the Five-Year and Annual Plans depends upon the status or characteristics of the PHA. The PHA Plan requirements vary depending upon whether the PHA administers only

---

<sup>20</sup> 24 C.F.R. §903.6(a)–(b).

<sup>21</sup> 24 C.F.R. §903.7; 42 U.S.C. §1437c–1(d).

<sup>22</sup> 24 C.F.R. §903.7(r). Often the attachment regarding amendments is filed with an early version of the Annual Plan.

Section 8, is a small PHA, a “high performing” PHA, or a “troubled” PHA.<sup>23</sup> Planning documents must also include information about the PHA’s Rental Assistance Demonstration (RAD)<sup>24</sup> conversions of public housing, if any, and how they are consistent with the PHA’s overall plan.

To review the Housing Authority Profile of every PHA in California, go to:

<http://www.hud.gov/offices/pih/systems/pic/haprofiles/index.cfm>.

Click on “browse or search housing profits” and then view the State of California. By clicking on the Housing Authority “Code,” advocates can review the status and characteristics of each PHA in the state. The page shows the housing authority’s “designation” regarding their performance (high performer, standard performer, or troubled) and a performance score.

*Standard PHAs.* PHAs that have at least 250 units of public housing and are “standard performers” must respond to all elements of the PHA Annual Plan.

*Section 8 Administration Only.* A PHA that operates only the Section 8 voucher program must submit an Annual Plan every year but is not required to complete all the elements of the Annual Plan.<sup>25</sup>

*Small PHAs & High Performing PHAs.* A PHA is designated as a “small PHA” if it has less than 250 units of public housing.<sup>26</sup> PHAs can also be designated as “high performers,” regardless of their size. High performing PHAs and small PHAs that are not designated as troubled or at risk of being troubled are only required to submit a detailed Annual Plan every five years along with the Five-Year Plan.<sup>27</sup> For all other fiscal years these PHAs may submit a “streamlined” Annual Plan.<sup>28</sup> The specific requirements for streamlined Annual Plans are outlined in the regulations, and

---

<sup>23</sup> 24 C.F.R. §§903.9; 903.11; 903.12. 42 U.S.C. §1437d(j) and 24 C.F.R. §902.9 *et seq.* include a description of the PHA scoring and performance designation system. Scoring is based on physical condition, financial condition, management operations, and the Capital Fund program.

<sup>24</sup> For more on the RAD program, visit the National Housing Law Project’s website at: <http://www.nhlp.org/>.

<sup>25</sup> 24 C.F.R. §903.11 (2007). For a PHA that administers only a Section 8 voucher program, the Annual Plan must include elements (a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r) of the Annual Plan Checklist.

<sup>26</sup> 24 C.F.R. §903.12.

<sup>27</sup> 24 C.F.R. §903.11. The once-every-five-years Annual Plan must include Checklist Elements (a), (b), (c), (d), (g), (h), (k), (o) and (r). See 24 C.F.R. §903.12 (small PHAs) and 69 FR 64826 (Nov. 8, 2004) (Notice of Further Annual Plan Deregulation for High Performing Public Housing Agencies). Pursuant to 24 C.F.R. §903.11(c), the *Federal Register Notice* altered the requirements regarding a streamlined plan for “high performing” PHAs.

<sup>28</sup> 24 C.F.R. §903.12.

include: (1) a statement of housing needs for low income people in the PHA's jurisdiction; (2) the PHA's policies for eligibility, tenant selection and admissions; (3) a statement of the PHA's financial resources; and (4) how the PHA determines tenant rent.<sup>29</sup> The streamlined Plan must provide information about how the public can access all PHA policies and information covered by standard Annual Plan submissions.<sup>30</sup>

*Troubled PHAs.* PHAs that are designated as “troubled” are required to respond to all elements of the PHA Annual Plan, and include or reference any applicable performance agreements with HUD.<sup>31</sup> HUD may also require a PHA designated as troubled or at risk of being designated as troubled submit its operating budget with the Plan.<sup>32</sup>

### III. Program Specific Plans

#### A. Section 8 Administrative Plan

The Section 8 Administrative Plan contains all of the PHA's discretionary policies regarding the Housing Choice Voucher program. The PHA Board of Commissioners must approve the Section 8 Administrative Plan and any amendments, and a copy must be sent to HUD.<sup>33</sup> The Plan is a supporting document for the PHA plan discussed above and must address the following issues:<sup>34</sup>

- Selection of applicants from the waiting list;
- Issuing or denying vouchers, including the PHA's policy for extending the voucher term;
- Occupancy policies, such as the definition of family and standards for denying or terminating assistance;
- Encouraging participation of owners outside of areas of poverty or minority concentration;
- Assistance to be provided to applicants and participants who claim illegal discrimination prevented them from leasing a unit;
- Tenant screening policies;
- PHA subsidy standards, by bedroom size;
- Eligibility in case of a family dissolution—i.e., who receives a subsidy upon family breakup;

<sup>29</sup> 24 C.F.R. §§903.7, 903.11, 903.12.

<sup>30</sup> 24 C.F.R. §903.11(b).

<sup>31</sup> 24 C.F.R. §903.9.

<sup>32</sup> 24 C.F.R. §903.9.

<sup>33</sup> 24 C.F.R. §982.54(a) (2007).

<sup>34</sup> A complete list of the required topics appears in 24 C.F.R. §982.54(d) and the Housing Choice Voucher Program 7420.10G (April 2001), Chapter 3.2, available at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/forms/guidebook](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook).

- Informal review and informal hearing procedures;
- Procedures for setting and revising voucher payment standards;
- Method for determining rent reasonableness;
- Policies on the use of special housing types, such as shared housing, single room occupancy and mobile homes;
- Policies on payment of money that a family owes the PHA;
- Guidelines and standards for Housing Quality Standard (HQS) inspections of assisted units.

In addition to the required items above, the Section 8 Administrative Plan also may cover additional topics, such as civil rights obligations, reasonable accommodation provisions, portability policies and privacy policies. The policies outlined in the Administrative Plan govern all aspects of the Housing Choice Voucher program and are critically important to ensuring that applicants and recipients of vouchers are treated fairly. It is important for advocates to participate in the planning process to keep PHAs accountable for compliance with federal regulations<sup>35</sup> and to shape policies that address the needs of the community. A sample comment letter on an Administrative Plan and Admissions and Continued Occupancy Policy (discussed below) is included as Appendix L.

### **How to Obtain the Section 8 Administrative Plan**

Most PHAs post their Administrative Plan on their website. The Administrative Plan is a supporting document to the PHA Annual Plan and therefore must be available for review at the PHA's main office. Because a PHA is required to submit the Administrative Plan to HUD, HUD also has a copy.

## **B. Public Housing Admission and Continued Occupancy Plan (ACOP)**

The Admissions and Continued Occupancy Plan (ACOP) lays out the PHA's policies and procedures for public housing; it is the public housing companion to the Administrative Plan. HUD requires PHAs to include the following policies and procedures in the ACOP:<sup>36</sup>

- An admissions policy designed to promote deconcentration of poverty;<sup>37</sup>
- Policies regarding responses to requests for reasonable accommodation for individuals due to their disability;<sup>38</sup>
- Policies regarding maintaining a wait list;<sup>39</sup>

<sup>35</sup> Federal regulations governing the Housing Choice Voucher program can be found at 24 C.F.R. §982.54 *et seq.*

<sup>36</sup> 42 U.S.C. §1437n(a)(3)(B)(i); 24 C.F.R. §960.202(a) (written admission policies); Public Housing Occupancy Guidebook, Chapter 1.3, (hereinafter Public Housing Occupancy Guidebook), available at: [http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_10760.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10760.pdf).

<sup>37</sup> 42 U.S.C. §1437n(a)(3)(B)(i).

<sup>38</sup> Public Housing Occupancy Guidebook, at Chapter 1.2. See *also* 24 C.F.R. §960.202.

<sup>39</sup> Public Housing Occupancy Guidebook, at Chapter 3 and App III. See *also* 24 C.F.R. §§903.7(b)(2), 960.202(c).

- Applicant selection and screening policies;<sup>40</sup>
- Individual family characteristics, such as number of persons per unit;<sup>41</sup>
- Applicant intake and processing;<sup>42</sup>
- Preferences, if any;<sup>43</sup>
- Policies on delayed payment of security deposit, if any;<sup>44</sup>
- Tenant selection and assignment plan (TSAP). The TSAP covers items such as: site-based or community-wide wait lists; the offering of a unit when more than one is available; how many offers an applicant may refuse and still remain on a wait list; what is considered good cause for refusing a unit; how applicants can be removed from the wait list; and when transfers take precedence over offers to applicants;<sup>45</sup>
- The range of unreimbursed medical expenses that may be claimed by elderly and disabled households;<sup>46</sup>
- Policy regarding permissive deductions from income, if any;<sup>47</sup>
- Ceiling rent policies, if any;<sup>48</sup>
- Policy on switching from flat rents to income-based rents based upon hardship;<sup>49</sup>
- Family circumstances that would qualify for a financial hardship and exemption from minimum rent;<sup>50</sup>
- Policy on housing a family that is splitting up;<sup>51</sup>
- Policy on the special rent re-examinations in the event that income cannot be accurately determined;<sup>52</sup>
- Interim reexaminations of income and household composition policies;<sup>53</sup>
- Policy on reduction in rent due to certain reductions in welfare;<sup>54</sup>
- Definition of the term “guest”;<sup>55</sup>
- Policies regarding admission of victims of domestic violence, if any.<sup>56</sup>

<sup>40</sup> Public Housing Occupancy Guidebook, at Chapter 4. See also 24 C.F.R. §960.202(c).

<sup>41</sup> Public Housing Occupancy Guidebook, at Chapters 5.4 and 6.9.

<sup>42</sup> *Id.* at Chapters 6.3 and 6.4. See also 24 C.F.R. §960.201.

<sup>43</sup> Public Housing Occupancy Guidebook, at Chapters 3.6 and 6.5. See also 24 C.F.R. §960.206.

<sup>44</sup> Public Housing Occupancy Guidebook, at Chapter 6.11.

<sup>45</sup> *Id.* at Chapter 8.0. See also 24 C.F.R. §903.7(b)(2).

<sup>46</sup> Public Housing Occupancy Guidebook, at Chapter 10.2. See also 24 C.F.R. §5.611.

<sup>47</sup> Public Housing Occupancy Guidebook, at Chapter 10.3. See also 24 C.F.R. §5.611.

<sup>48</sup> Public Housing Occupancy Guidebook, Chapter 10.5. See also 24 C.F.R. §960.253(d).

<sup>49</sup> Public Housing Occupancy Guidebook, at Chapter 10.6. See also 24 C.F.R. §960.253.

<sup>50</sup> 24 C.F.R. §5.630(b).

<sup>51</sup> Public Housing Occupancy Guidebook, at Chapter 11.5.

<sup>52</sup> *Id.* at Chapter 12.6.

<sup>53</sup> *Id.* at Chapter 13. See also 24 C.F.R. §960.259.

<sup>54</sup> Public Housing Occupancy Guidebook, at Chapter 13.5. See also 24 C.F.R. §5.615.

<sup>55</sup> Public Housing Occupancy Guidebook, at Chapter 17.6. See also 24 C.F.R. §§966.4(d)(1), 5.100.



The Public Housing Occupancy Guidebook contains a sample Admission and Continued Occupancy Policy.<sup>57</sup> The sample ACOP includes a number of provisions that are recommended but not required. Like the Administrative Plan, the ACOP includes policies governing all aspects of public housing tenancy, and participation in the planning process is an important way to shape those policies so that applicants and tenants will be treated fairly.

**C. Plan for Designation of Public Housing for Elderly and Disabled**

A PHA may designate a public housing development or a portion thereof to serve only the elderly, people with disabilities, or mixed elderly and disabled families.<sup>58</sup> PHAs were previously required to admit households headed by both elderly and non-elderly people with disabilities to the same developments. In general, the designation process has resulted in a reduction of the number of public housing units available to the non-elderly disabled families.

In order to designate the development or a portion thereof for the elderly or people with disabilities, a PHA must develop a plan that must be reviewed by the Resident Advisory Board, reviewed by the PHA Board of Commissioners, and approved by HUD.<sup>59</sup> The plan must show why designation is necessary and explain any plans to assist people who would have been housed, but for the restricted occupancy designation.<sup>60</sup> The public may comment on a Designated Housing Plan and HUD will consider those comments.<sup>61</sup> The plan may be included with the PHA Annual Plan, but HUD approves the Designated Housing Plan independently.<sup>62</sup>

The Designated Housing Plan must demonstrate that the designation is necessary by establishing that it is consistent with the goals of the

**How to Obtain the Public Housing Admission and Continued Occupancy Plan**

The ACOP is a supporting document to the PHA Annual Plan and therefore must be available for review at the PHA's main office. Most PHAs post the ACOP on their website.

Under certain conditions, a PHA can designate a development, or a portion of a development, solely for elderly persons or people with disabilities.

---

<sup>56</sup> Public Housing Occupancy Guidebook, at Chapter 19.3.

<sup>57</sup> *Id.* at App. III.

<sup>58</sup> 42 U.S.C. §1437e(a)(1).

<sup>59</sup> Public Housing Occupancy Guidebook, at Chapter 3.9.

<sup>60</sup> 42 U.S.C. §1437e(d).

<sup>61</sup> *Id.*

<sup>62</sup> 42 U.S.C. §1437e(e).

Consolidated Plan (see Chapter 11), and that it meets the housing needs of the low-income families in that jurisdiction.<sup>63</sup> The plan also must describe the following:

1. The project or portion thereof to be designated;
2. Alternative resources to house families who may have been housed if occupancy were not restricted;
3. That there will be no eviction or lease termination due to designation;
4. Plans for voluntary relocation due to designation;
5. A statement that the Uniform Relocation Act (URA) is not applicable (see Chapter 9); and
6. Whether near-elderly families will be eligible.<sup>64</sup>

HUD's review and approval authority for a Designated Housing Plan is limited.<sup>65</sup> However, the approval is initially for five years and must be renewed by HUD every two years thereafter.

#### **IV. Plans to Demolish, Revitalize and Privatize Public Housing**

##### **A. Demolition and Disposition**

Public Housing Authorities may demolish "severely distressed" public housing developments that have not been well-maintained and would be expensive to repair.<sup>66</sup> In order to demolish or dispose of public housing units, a PHA must submit an application to HUD for approval.<sup>67</sup> This process is referred to as "demo/dispo." The issues to be addressed in the demo/dispo application differ depending upon whether it is an application for demolition or an application for disposition. As noted below, there are certain requirements that apply to both demolition and disposition applications.

*Demolition Application.* In the application for demolition, a PHA must certify to HUD that the development or portion that is to be demolished is:

1. Obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and

##### **How to Obtain the Designation Plan**

The Designation Plan is a supporting document to the PHA Annual Plan and therefore must be available for review at the PHA's main office. Because HUD must approve a Designation Plan, a copy may also be available from HUD.

---

<sup>63</sup> 42 U.S.C. §1437e(d).

<sup>64</sup> 42 U.S.C. §1437e.

<sup>65</sup> 42 U.S.C. §1437e(e).

<sup>66</sup> 42 U.S.C. §1437p.

<sup>67</sup> Form HUD-52860, Demolition/Disposition Application (Sept. 2002), available at: <http://portal.hud.gov/hudportal/documents/huddoc?id=52860.pdf>.

2. No reasonable program of modifications is cost-effective to return [the development or portion thereof] to useful life.<sup>68</sup>

*Disposition Application.* For a PHA to dispose of public housing units, it must make one of three certifications. Either “retention of the property is not in the best interests” of the public housing residents because the “conditions in the area surrounding the public housing project adversely affect the health or safety of the residents or the feasible operation of the project by the public housing agency,”<sup>69</sup> or “retention of the property is not in the best interest” of the public housing residents because disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing.<sup>70</sup> Finally, the PHA can certify that it has “otherwise determined that the disposition is appropriate” within certain guidelines.<sup>71</sup> In certain circumstances, the PHA must offer the units slated for disposition for sale to certain resident groups for continued use as low-income housing.<sup>72</sup>

*Requirements for both Demolition and Disposition Applications.* For either application, the PHA must certify that it has authorized the demolition or disposition in the PHA’s Annual Plan.<sup>73</sup> The PHA also must certify that it will comply with the relocation provisions set forth in the public housing demolition/disposition statute.<sup>74</sup> Finally, the PHA must certify that it will carry out the demolition/disposition plans in accordance with civil rights statutes.<sup>75</sup> HUD will disapprove a PHA application for demolition or disposition if the certifications are “clearly inconsistent” with data or information available to HUD, or if the PHA failed to consult with the residents, resident councils and local government.<sup>76</sup>

Advocates in communities impacted by natural disasters should monitor the PHA’s plans to demolish public housing. PHAs may demolish housing without prior approval from HUD where the housing is destroyed by

### How to Obtain the Demolition or Disposition Plan

A Demolition or Disposition Plan is a supporting document to the PHA Annual Plan and therefore must be available for review at the PHA’s main office. In addition a copy of the Demolition or Disposition Plan should be available from HUD.

<sup>68</sup> 42 U.S.C. §1437p(a)(1)(A).

<sup>69</sup> *Id.* at §1437p(a)(2)(A)(i).

<sup>70</sup> *Id.* at §1437p(a)(2)(A)(ii).

<sup>71</sup> *Id.* at §1437p(a)(2)(B)(i)-(ii).

<sup>72</sup> *Id.* at §1437p(c)(1).

<sup>73</sup> *Id.* at §1437p(a)(3); see *supra* for discussion of the PHA Annual Plan.

<sup>74</sup> 42 U.S.C. §1437p(a)(4).

<sup>75</sup> See *McCardell v. HUD*, 794 F.3d 510, 523-524 (5th Cir. 2015) for a discussion of the safe harbor provision in 42 U.S.C. §1437p(d). In *McCardell* the Fifth Circuit held that the safe harbor provision precluded a Fair Housing Act claim based on the housing authority’s decision to rebuild demolished housing on the same segregated site.

<sup>76</sup> *Id.* at §(b).

disaster, and it is important for advocates to ensure that natural disasters are not used as an opportunity to destroy unpopular developments and displace residents.<sup>77</sup>

## **B. HOPE VI**

The HOPE VI program was launched in 1993 to use HUD's demo/dispo authority to eradicate deteriorating public housing developments and replace them with new mixed-income developments. According to HUD, HOPE VI was aimed at achieving three overall goals: physical improvements, management improvements, and social and community services to address resident needs.<sup>78</sup> Between 1993 and 2003, nearly \$5.5 billion in HOPE VI revitalization grants were awarded to 217 grantees.<sup>79</sup>

Housing advocates criticized the HOPE VI program because it did not include a "one-for-one" replacement requirement.<sup>80</sup> When large scale developments were demolished and replaced with low-rise mixed-income projects, the new projects had fewer deeply affordable units and many extremely low-income tenants were displaced.<sup>81</sup> The HOPE VI era came to an end in 2010, when no more funds were budgeted for the program.

## **C. Rental Assistance Demonstration**

HUD developed the Rental Assistance Demonstration (RAD) in 2012 to address the same problems HOPE VI was intended to fix. HUD estimates that 10,000 units are lost each year due to poor maintenance and deterioration and that \$26 billion worth of repairs to public housing have been deferred due to lack of funding. RAD is intended to avoid the loss of deeply subsidized units and provide funding for repairs and improvements through privatization.

RAD allows PHAs, as well as owners of other HUD-assisted properties, to convert their units to project-based Section 8 contracts. This conversion allows owners to obtain financing for capital

<sup>77</sup> See discussion at *McCardell*, *supra*, 794 F.3d 510, 513-14.

<sup>78</sup> See *About HOPE VI*, (Apr. 15, 2005), available at: <http://www.hud.gov/offices/pih/programs/ph/hope6/about/index.cfm>.

<sup>79</sup> For a list of HOPE VI revitalization grantees listed alphabetically by PHA, with the name of the affected development and the amount of the awards see *HOPE VI Revitalization Grants* (Nov. 2004), available at: <http://www.hud.gov/offices/pih/programs/ph/hope6/grants/revitalization/>.

<sup>80</sup> See *Reese v. Miami-Dade Cnty.*, 242 F. Supp. 2d 1292, 1309 (S.D. Fla. 2002) *aff'd*, 77 F. App'x 506 (11th Cir. 2003).

<sup>81</sup> Rachel Peterson, *HOPE VI in San Francisco* (2005), available at: <http://web.archive.org/web/20051231133834/http://www.spur.org/newsletters/0305.pdf>; see National Housing Law Project, *False Hope: Critical Assessment of the HOPE VI Public Housing Redevelopment Program* (2002), available at: <https://www.nhlp.org/files/FalseHOPE.pdf>. ("HOPE VI plays upon the public housing program's unfairly negative reputation and an exaggerated sense of crisis about the state of public housing in general to justify a drastic model of large-scale family displacement and housing redevelopment that increasingly appears to do more harm than good.")

improvements and avoids demolition or disposition of the properties. The program has two components; the first component allows owners of Public Housing and Section 8 Mod Rehab funded properties to convert their properties to long-term, project-based Section 8 contracts. The second RAD component allows owners of older HUD programs (Rental Supplement, Rental Assistance Payment, and Moderate Rehabilitation) to convert to Section 8 project-based vouchers.

RAD authorizing legislation provides various protections for current tenants which HUD has expanded upon in a series of notices.<sup>82</sup> For example, current tenants must be notified of plans to convert prior to the submission of a RAD application and cannot be permanently displaced as a result of the conversion.<sup>83</sup> Further, any rent increase of 10% or \$25 (whichever is higher) due to conversion must be phased in over three to five years.<sup>84</sup> Current tenants have a right to return to the property once conversion is completed and they cannot be re-screened.<sup>85</sup> Although units must generally be replaced on a one-for-one basis, PHAs can reduce the number of assisted units by up to 5% or five units (whichever is higher) without seeking HUD approval. Public housing tenants who are displaced due to RAD are entitled to relocation benefits under the Uniform Relocation Act.<sup>86</sup> In December 2014 Congress authorized up to 185,000 units for conversion under the first RAD component, a significant increase from the originally authorized 60,000.<sup>87</sup> As of October 31, 2014, HUD reported that 7,340 public housing units and 242 Mod Rehab units received final approval for conversion, while another 51,422 public housing units and 736 Mod Rehab units had preliminary approval. 120,404 other units remained on a waiting list. In 2015 HUD announced that it would prioritize public housing conversions over Section 8 mod rehab projects.<sup>88</sup>

Under the second component of RAD, there is no limit on how many projects can convert to Section 8 project-based vouchers. However, the number of projects is limited by the availability of tenant protection vouchers for residents of converting properties. As of October 31, 2014, more than 14,000 units were in the process of being converted under the second component, while 7,662 units had already completed the process.

---

<sup>82</sup> Consolidated and Further Continuing Appropriations Act, 2012, Pub. Law 112-55, 125 Stat. 673 (Nov. 18, 2011); available at: [http://nhlp.org/files/RAD\\_statute\\_12.16.pdf](http://nhlp.org/files/RAD_statute_12.16.pdf); PIH 2012-32, Rev-2, June 15, 2015.

<sup>83</sup> PIH-2012-32 (HA), REV-2 Rental Assistance Demonstration – Final Implementation (June 15, 2015).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> For more on relocation benefits, see Chapter 9.

<sup>87</sup> Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235, approved December 6, 2014).

<sup>88</sup> PIH-2012-32, Rev 2, June 15, 2015.

Visit the HUD website or contact your local housing authority to find out if public or other subsidized housing is being converted in your community.<sup>89</sup> RAD conversion is considered a significant amendment to the PHA's Five-Year Plan, so conversion plans require public notice and consultation with the Resident Advisory Board.<sup>90</sup> The public process provides an opportunity for advocates to influence RAD plans.<sup>91</sup> It is essential for advocates and residents to get involved in the RAD process to ensure that tenants' rights are protected.<sup>92</sup> For example, the due process rights provided to public housing tenants are much stronger than those for project-based Section 8 tenants, so it is critical for advocates to ensure that those rights are preserved after conversion and that private owners are not permitted to reduce procedural protections for tenants.

RAD conversion is considered a significant amendment to the PHA's Five-Year Plan, so conversion plans require public notice and consultation with the Resident Advisory Board.

## V. The Family Self Sufficiency Action Plan

The Family Self Sufficiency (FSS) program is designed "to enable eligible families to achieve economic independence and self-sufficiency."<sup>93</sup> The program helps Housing Choice Voucher, public housing tenants, and residents of Native American Housing Assistance and Self-Determination housing save money by giving tenant families a credit when their rent increases as a result of earned income.<sup>94</sup> The credit is deposited in an escrow account that the family can access when they complete the program. Participating families must execute a five-year FSS contract that describes the services and goals. Families receive services to help them increase their earned income including child care, transportation, education, and financial literacy counseling.

The FSS program is administered by PHAs, with the help of Program Coordinating Committees (PCCs) which usually consist of local government representatives, employment and job training agencies, welfare agencies, nonprofit providers, local businesses, and assisted families.

<sup>89</sup> RAD information can be found at <https://www.hudexchange.info/programs/rad/>.

<sup>90</sup> PIH 2012-32, Rev. 2, June 15, 2015, p. 41. For more on public hearing and RAB requirements, see sections 1–3 above.

<sup>91</sup> For more information about RAD, including a tool kit and training for residents and advocates, visit the National Housing Law Project's RAD page at <http://nhlp.org/RAD>.

<sup>92</sup> For examples of effective RAD advocacy, see National Housing Law Project's RAD Advocacy Guide, available at: <http://nhlp.org/RAD>.

<sup>93</sup> 42 U.S.C. §1437u(a).

<sup>94</sup> For a list of participating PHAs, visit HUD's FSS website at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/fss](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/fss).

However, before a PHA can implement an FSS program, it must have a HUD approved Action Plan describing how the program will be administered.<sup>95</sup>

The following information must be in the Action Plan:

1. Demographics and service needs of the families expected to participate;
2. An estimate of the number of families who will participate in the FSS program;
3. Descriptions of:
  - How families will be selected to participate in the FSS program;
  - The incentives that the PHA plans to use to encourage participation;
  - The outreach efforts to recruit participants for the FSS program;
  - The activities and supportive services to be provided;
  - How the needs of families will be identified and services provided;
  - Whether a family will be terminated or service withheld if the family fails to comply with the FSS program;
  - The availability of grievance and hearing procedures;
4. An assurance that the rights of non-participating families will not be interfered with;
5. A timetable for program implementation; and
6. A certification that the program has been developed in coordination with employment, childcare, transportation training and education programs in the area.<sup>96</sup>

**How to obtain  
the Family Self  
Sufficiency  
Action Plan**

The FSS Action Plan is a supporting document to the PHA Annual Plan and therefore must be available for review at the PHA's main office.

*Disclaimer:* Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

<sup>95</sup> HUD FSS Fact Sheet, January 2014, available at: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/hcv/fss](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/fss).

<sup>96</sup> 24 C.F.R. §984.201 (2007).

## Chapter 13: Section 3 Plans



## I. Purpose

Section 3, a provision of the Housing and Urban Development Act of 1968, is intended to foster local economic development, neighborhood economic improvement, and individual self-sufficiency.<sup>1</sup> Section 3 requires that recipients of HUD's housing and community development funds provide job training, employment, and contracting opportunities for low- or very-low income residents in their neighborhoods.<sup>2</sup> Section 3 regulations set forth goals and priorities for hiring public housing tenants, homeless individuals, Youthbuild participants, and other low-income residents. Section 3 regulations also establish contracting goals for businesses owned by individuals in these groups.<sup>3</sup>

Section 3 regulations generally apply to all HUD funds that public housing agencies (PHAs) receive for developing, operating and modernizing housing.<sup>4</sup> In addition, Section 3 applies to certain HUD-funded housing and community development projects involving housing rehabilitation, housing construction, or other public construction.<sup>5</sup> See Chapter 11 of this manual for more information about these federal housing funds. With certain exceptions, the contractors and subcontractors of the recipient agencies also are subject to Section 3 rules.<sup>6</sup>

The Section 3 program requires that recipients of certain HUD funds provide job training, employment, and contracting opportunities for low- or very low-income neighborhood residents.

<sup>1</sup> Pub. L. No. 90-448, §3 (1968) (codified at 12 U.S.C. §1701u).

<sup>2</sup> 12 U.S.C. §1701u(b). 24 C.F.R. §135.1 (2007).

<sup>3</sup> 24 C.F.R. §§135.34, 135.36.

<sup>4</sup> 24 C.F.R. §§135.3(a)(1), 135.3(a)(3)(i).

<sup>5</sup> For example, projects funded through Community Development Block Grant, HOME Investment Partnerships, Emergency Shelter Grant, and Housing Opportunities for People with AIDS funds. 24 C.F.R. §§135.3(a)(2), 135.3(a)(3)(ii)(A).

<sup>6</sup> 24 C.F.R. §135.3(a)(3)(ii)(B).

## II. Responsibilities of the Recipient

Each recipient of funds subject to Section 3 must comply with Section 3 in its own operations and ensure that its contractors and subcontractors are compliant.<sup>7</sup> This responsibility includes but is not limited to:

- Implementing procedures designed to notify people specified under Section 3 about training and employment opportunities;
- Implementing procedures to notify businesses specified under Section 3 about contracting opportunities;
- Notifying potential contractors for projects covered by Section 3 of their hiring obligations, and incorporating a Section 3 contractual clause in all solicitations and contracts;
- Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 businesses by ensuring at least 30 percent of the aggregate number of new hires are Section 3 residents;
- Cooperating with HUD in ensuring compliance of contractors and subcontractors, and refraining from entering into any contract where the recipient has notice that the contractor has been found in violation of the regulations;
- Documenting actions to comply with the Section 3 requirements and noting impediments to compliance, if any.<sup>8</sup>

In addition, HUD requires recipients of funds subject to Section 3 to file reports regarding compliance.<sup>9</sup> PHAs must also make available, as a supporting document to the PHA Annual Plan, Section 3 documentation required by 24 C.F.R. Part 135.<sup>10</sup> This documentation should include the information listed above and may also include any documents created by the PHA setting forth the agency's Section 3 Plan.

---

<sup>7</sup> 24 C.F.R. §135.32.

<sup>8</sup> 24 C.F.R. §135.32 (2007).

<sup>9</sup> Form HUD-60002 (6/2001), available at:

[http://www.hud.gov/offices/lead/library/lead/Section3\\_Form.pdf](http://www.hud.gov/offices/lead/library/lead/Section3_Form.pdf).

<sup>10</sup> Form HUD-50075 SA (4/30/2003) and HUD Notice PIH 2003-21, Deregulation for Small Public Housing Agencies (PHA) and Submission Requirements for New Small PHA Streamlined Annual PHA Plans (HA), Sept. 9, 2003, available at:

[https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_8903.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_8903.pdf).

### III. Current Issues in the Section 3 Program: HUD's Proposed Rule

HUD last updated its Section 3 regulations in 1994. These outdated regulations are vague in some areas are confusing for some PHAs, HUD grantees, and their contractors. On March 27, 2015, HUD published a proposed rule updating HUD's Section 3 regulations.<sup>11</sup> The proposed rule aims to promote compliance with Section 3 regulations, clarify Section 3 obligations, and strengthen HUD's oversight of the Section 3 program. As of this printing, HUD has not issued its final rule. The following are some of the more significant provisions of the proposed rule:

- *New Standard for Statutory Language:* The proposed rule establishes a new standard for compliance with Section 3 hiring obligations. The new standard is “to the greatest extent feasible.” The proposed rule sets out a list of actions recipients must take to demonstrate that they have complied “to the greatest extent feasible” with Section 3 obligations.
- *Redefinition of the Term “New Hire”:* The current rule states that 30% of new hires must be Section 3 residents. However, the rule does not specify how long the new hires must be employed. This allows contractors to let go of resident-employees after only a short period of time. The proposed rule redefines “new hire” as someone who works at least 50% of the average hours worked for the specific job the person was hired for, for the duration of time that the work is performed on the project. For example, if a typical carpenter works 40 hours a week, then a Section 3 new hire must work at least of 20 hours a week and for as long as a typical carpenter works at the project.
- *New Dollar Threshold:* The dollar threshold of the current rule is \$200,000. Under the current rule, once a recipient receives an aggregate of \$200,000 of housing and community development assistance in a year, Section 3 obligations are triggered. However, some recipients applied this threshold on a per-project basis to avoid application of the rule. The proposed rule aims to eliminate this loophole and establishes a new threshold of \$400,000. Section 3 obligations will now kick in if a recipient intends to allocate an aggregate amount of \$400,000 or more to Section 3 covered projects (housing rehabilitation, housing construction, demolition, or other public construction), in a given annual reporting period. In the rule HUD notes that less than 5% of federal financial assistance is allocated to grantees that spend less than \$400,000 on covered

<sup>11</sup> A copy of the proposed rule is available at:

[https://www.federalregister.gov/articles/2015/03/27/2015-06544/creating-economic-opportunities-for-low--and-very-low-income-persons-and-eligible-businesses-through?utm\\_content=header&utm\\_medium=slideshow&utm\\_source=homepage](https://www.federalregister.gov/articles/2015/03/27/2015-06544/creating-economic-opportunities-for-low--and-very-low-income-persons-and-eligible-businesses-through?utm_content=header&utm_medium=slideshow&utm_source=homepage). HUD published a minor correction to the proposed rule, which can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2015-04-01/pdf/C1-2015-06544.pdf>. See also National Low Income Housing Coalition's summary of the rule at: <http://nlihc.org/article/section-3-proposed-rule-be-published>.

activities, so the vast majority of funds will go to programs that must comply with Section 3.

- *Priority*: The proposed rule will give priority to Section 3 businesses at housing and community development projects that retain a minimum of 75% of previously hired Section 3 residents. The projects must also provide a minimum of 50% of on-the-job training or apprenticeship opportunities to Section 3 residents.
- *Self-Certification*: Some residents and businesses choose to self-certify that they qualify for Section 3 preference. The proposed rule now will allow recipients to accept these residents and businesses. The proposed rule also allows recipients to presume that the resident or business qualifies for Section 3 preference if they live in or are located in disadvantaged census tracts. However, recipients still must examine a portion of those that self-certify and verify that they comply with Section 3 requirements.
- *Penalties*: The proposed rule establishes penalties for recipients that fail to submit Section 3 annual reports. Penalties include denying or withholding subsequent funds.<sup>12</sup>

It is estimated that the changes in the proposed rule will create 1,400 more jobs for Section 3 residents, and an additional \$172 million a year will be directed to Section 3 businesses through HUD-funded contracts. However, Section 3 largely depends on oversight by local advocates in order to be effective.

Advocates should meet with residents and community organizations to discuss how they can use Section 3 goals and preferences to increase employment and contracting opportunities for low-income individuals and Section 3 businesses. This advocacy is particularly important when a housing authority is conducting a major project that could create many jobs for residents. Advocates should also work with recipients and monitor their compliance with Section 3. In addition to working with local partners, advocates can urge HUD to conduct compliance reviews and impose penalties where appropriate.<sup>13</sup>

*Disclaimer*: Although Western Center on Law and Poverty strives to ensure that the information contained in this chapter is accurate and up-to-date, we make no warranties in that regard. Frequent changes in this area of the law can render some sections out of date. This Guide is not intended to be a substitute for independent legal research. (Updated 2016).

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## Appendix A: Local Housing Analysis

## A. Local Housing Analysis

### General Characteristics—Housing Needs

1. What is the total population of the community?
2. What are the income levels of the people?
3. What is the race/ethnicity breakdown?
4. What percentage of the population speak a first language other than English?
  - a. What languages?
5. What percentage of the population are:
  - a. Homeless
  - b. Elderly
  - c. Documented/Undocumented
  - d. People with disabilities
  - e. Large families
  - f. Single parent households
  - g. Farmworkers

### General Characteristics—Market Trends of the Community

1. Types of Housing in the community:
  - a. Total number of housing units
  - b. Ratio of single family v. multi-family housing
  - c. Ratio of rental units v. ownership units
  - d. Size of units: What percentage of units are studio, one-, two-, three- or four-bedroom, or larger?
2. Rental Housing:
  - a. What is the average rent?
  - b. Are rents increasing or decreasing?
  - c. Are landlords charging more for security deposits?
  - d. Is there a high number of “absentee landlords”?
  - e. Is there a high number of renters being evicted post-foreclosure?

3. Ownership Housing:
  - a. What is the average sales price?
  - b. Are sales prices increasing or decreasing?
  - c. Are there a high number of foreclosures?
  - d. Are homeowners able to obtain conventional prime mortgages—or are they forced to get non-traditional, “sub-prime” (i.e., higher interest rate and fees) loans?
  - e. Is the jurisdiction participating in a Neighborhood Stabilization Program or other foreclosure-mitigating program?
4. Housing Affordability:
  - a. How much housing is available for people earning:<sup>1</sup>
    - i. Less than 30% of area median income (AMI)?
    - ii. Between 30 and 50% of AMI?
    - iii. Between 50 and 80% of AMI?
    - iv. Between 80 and 120% of AMI?
    - v. Over 120% of AMI?
  - b. Are households “cost burdened,” paying more than 30% of their income for housing costs and utilities?<sup>2</sup>
5. Housing Occupancy:
  - a. Are households “over-crowded”?<sup>3</sup>
  - b. What is the vacancy rate?<sup>4</sup> What is the “healthy” vacancy rate for that community?
6. Is gentrification an issue?
  - a. Are higher income people moving into the neighborhood?
  - b. Are lower income people being displaced?
  - c. Are new homeowners purchasing rental units, resulting in the eviction of current renting residents?
  - d. Are rental and housing prices increasing in a traditionally low-income neighborhood?

---

<sup>1</sup> See 12 U.S.C. §1701z-11 5(a) (defining when a unit is affordable); 42 U.S.C. §1437u (defining maximum rents as part of the incentives for participation); 24 C.F.R. 81.17 (defining moderate-income, low-income, very-low-income and especially-low-income).

<sup>2</sup> “Cost burden” is established when a family’s gross housing cost, including utilities exceeds 30% of their gross income. 42 U.S.C. §1437f(o); 24 C.F.R. 91.5.

<sup>3</sup> “Over-crowding” occurs when a housing unit contains more than one person per room.” See also 24 C.F.R. 91.5, 791.402(b). In California, “‘overcrowding’ means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations,” Cal. Health & Safety Code §33031; 25 C.C.R. §32.

<sup>4</sup> Typically, a vacancy rate of 2–5% is a healthy vacancy rate. [http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/humboldt\\_cou5rhna063012.pdf](http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/humboldt_cou5rhna063012.pdf), attachment 2 of HCD Regional Housing Need Determination: Humbolt CAOG.

7. Is blight an issue?
  - a. Are buildings becoming more rundown and/or vacant?
  - b. Are there decreased banking services? Or increased payday loan businesses?
  - c. Are there adequate schools, parks and services for the neighborhood?

### **General Characteristics—Housing Market**

1. Who lives in the “housing”?
  - a. Is it mostly occupied by owners? Or by renters?
  - b. Is it mostly single family homes, or multi-family?
  - c. In multi-family, are the units mostly apartments or are they condominiums and other housing types typically owned by the occupants?
  - d. Are commercial buildings being used for housing purposes?
    - i. Transient motels and hotels?
    - ii. Abandoned warehouses?
    - iii. Storefronts (because the vacancy rate for commercial rentals is too high?)
    - iv. Legal live/work?
2. Are there adequate housing types?
  - a. Are there enough single room occupancy (SROs) or studio apartments?
  - b. Housing with three and four bedrooms?
  - c. Senior housing?
  - d. Supportive or transitional housing for:
    - i. Homeless individuals and families?
    - ii. People with disabilities?
    - iii. Emancipating foster youth?
  - e. Emergency shelters for:
    - i. Families?
    - ii. Single men and women?
    - iii. Youth (either “runaway” youth or emancipating foster youth)?
    - iv. Survivors of domestic violence situations? Are male children prohibited from staying at domestic violence shelters?
    - v. Are conditions, such as religious participation, placed on residents staying in emergency shelters?
  - f. Affordable housing near transit opportunities?



3. Are there programs to assist people returning to the community from:
  - a. Prison?
  - b. Mental and Physical Institutions?
  - c. Foster care?
4. What is the age and condition of the housing?
  - a. Is it old or new? If the housing was built before 1977, does the jurisdiction address applicable lead-based paint issues?
  - b. Are there other health hazards in the existing housing, such as mold and mildew and other habitability issues?
  - c. Are there adequate parking spaces for the residents?
  - d. Is the housing safe from crime?
5. What about code enforcement?
  - a. Is code enforcement effective?
  - b. Do they respond timely, or at all, to tenant's complaints?
  - c. Is code enforcement used to unnecessarily displace tenants?
6. Are there local policies impeding the development of affordable housing?

## Appendix B: Sources of Housing Data and Analyses

## B. Sources of Housing Data and Analyses

The following is a list of sources to find housing data and analyses that help you understand the demand and supply for affordable housing in your community.

In the right column are one or more initials corresponding to the types of information that the source provides. The four initials, T, Q, C and P refer to the four categories of information in the section above.

- “T” is for Types of Housing
- “Q” is for Quality of Housing
- “C” is for Cost of Housing
- “P” is for People Who Live in the Community

### **California Association of Realtors**

C

Lobbying organization for realtors in California. The CAR frequently is cited in newspaper articles on housing trends in California. Occasionally, their website has relevant home ownership information regarding pricing, foreclosures and mortgage rates.

Website: <http://www.car.org/>

### **CoreLogic**

C

CoreLogic is a private business that tracks housing prices and other data in California and is a frequent source for newspaper accounts of housing prices. CoreLogic publishes Configurable Real Estate Reports. Registration and purchase may be required to download the reports:

<http://www.corelogic.com/about-us/research.aspx>.

Website: <http://www.corelogic.com/solutions/configurable-real-estate-data-reports.aspx/>

## Government Planning Documents

TQCP

Much of the work of gathering and analyzing housing data may already have been done by your local government agency. Many government planning documents such as housing elements or consolidated plans analyze available housing and affordable housing needs. Existing planning documents are a good place to start your research. Use caution, however, as most government planning documents understate affordable housing needs.

In addition, local governments occasionally use studies to evaluate particular housing issues. Examples of city studies include Los Angeles' Economic Study of the Rent Stabilization Ordinance<sup>1</sup> and its Study on Preservation in Transit-oriented Districts,<sup>2</sup> and San Diego's Creating Affordable Housing Through Public Housing Conversion Report.<sup>3</sup>

Website: This type of report can usually be found on city or county websites under housing, building, community development or related department sections.

## HUD's American Housing Survey

TQCP

Annual survey of U.S. housing, analysis is based on samples of metropolitan areas. The Survey provides a multitude of housing data by city and for all of U.S.

Website: <http://www.huduser.org/portal/datasets/ahs.html>

## HUD's Point In Time (PIT) Count of Homeless People

P

Local agencies receiving federal Continuum of Care funding conduct an annual count of unsheltered and sheltered homeless people every January. The methodology for collecting data has been criticized as flawed, but the "Point in Time" count remains one of the most often cited data source for issues impacting homeless people.

Website: <https://www.hudexchange.info/manage-a-program/coc-homeless-populations-and-subpopulations-reports/>

<sup>1</sup> Available at: <https://economicrt.org/publication/economic-study-of-the-rent-stabilization-ordinance-rso-and-the-los-angeles-housing-market/>.

<sup>2</sup> Available at: <http://hcidla.lacity.org/lahd-preservation-affordable-housing-transit-oriented-districts-study-2012>.

<sup>3</sup> Available at: <http://www.sdhc.org/Affordable-Housing/Creating-Affordable-Housing/>.

**National Low-Income Housing Coalition's *Out of Reach***

TC

Annual report calculates the Housing Wage on rental housing in every county and several hundred cities in the U.S. The Housing Wage is the amount of money a household must earn in order to afford a rental unit at a range of sizes (0, 1, 2, 3, and 4 bedrooms) at the area's Fair Market Rent (FMR).

Website: <http://nlihc.org/oor>

**National Low-Income Housing Coalition and Public & Affordable Housing Research Corporation's *National Housing Preservation Database***

TQCP

Research Corporation's National Housing Preservation Database and mapping tool incorporates data from multiple federal funding programs and allows advocates to search properties by location, source of funding, property owner, risk of loss, and other characteristics.

Website: <http://www.preservationdatabase.org/>

**PolicyLink.org's National Equity Atlas**

P

National Equity Atlas is a comprehensive resource for data that can be used to track, measure, and make the case for inclusive growth in America. The Atlas includes data on demographic changes and racial and economic inclusion for: the largest 150 regions, all 50 states, the District of Columbia, and the United States as a whole.

Website: <http://nationalequityatlas.org/>

**Real Answers**

C

Real Answers is a research organization and database publisher specializing in the multifamily housing market. The data is used to establish comparables when pricing or appraising a property. There is a charge for the data. Real Answers is often cited in California newspapers on rent trends, income from rental properties, etc. Their press releases and the data supporting it are available on their website.

Website: <http://www.realanswers.biz>

## **Rentometer**

TC

Input rental address, bedroom number and rent and site says how compares to rest of the neighborhood and provides satellite photos.

Website: <http://www.rentometer.com/>

## **U.S. Census Bureau**

TQCP

The U.S. Census is conducted every ten years and collects data on a multitude of topics. Housing data comprises a significant part of that data. There are shortcomings: Depending on what you are looking for, the data can be old (the last census was 2010) or the data can be difficult to find or not already analyzed. The bright side is that because this is a primary source of much housing data, much of the housing data you come across will be based on the Census data. So, you may be able to find a report which has already sifted through the Census for the data you are looking for. (See Chapter 5 for a guide to census mapping.)

Website: <http://www.census.gov/housing/>

## **Zillow**

TC

Input residential address and get estimated property value, square footage and satellite photo of the property.

Website: <http://www.zillow.com/>

### Resources for Understanding Planning and Affordable Housing

- Center for Community Change
  - Support community organizations that seek to impact public policy. Publications include *How and Why to Influence Public Policy—An Action Guide for Community Organizations*
  - <http://www.communitychange.org/>
- *Clearinghouse Review*
  - Anti-poverty publication with articles written by public interest advocates on topics including affordable housing
  - <http://povertylaw.org/content/clearinghouse-review-0>
- Institute for the Study of Homelessness and Poverty
  - Quick Data Guide on finding statistics on various subjects, including housing
  - <http://www.weingart.org>
- Legal Aid Foundation of Los Angeles
  - Los Angeles Residents' Guide to Development
  - <https://lafila.org/>
- Los Angeles Alliance for a New Economy
  - *Community Benefit Agreements: Making Development Projects Accountable*: <http://www.goodjobsfirst.org/publications/community-benefits-agreements-making-development-projects-accountable>
- National Housing Law Project
  - Resource and support for advocates on federal housing and planning issues
  - <http://www.nhlp.org/>
- National Low-Income Housing Coalition
  - Provides education materials for advocates on affordable housing issues
  - Advocates' Guide to Housing and Community Development Policy
    - <http://nlihc.org/library/guides>
- Policy Link
  - Policy papers on affordable housing strategies
  - <http://www.policylink.org/resources>
- Solano Press
  - "Curtin's California Land Use and Planning; Redevelopment in California" available for purchase at <http://www.solano.com>

## Appendix C: Conducting a “Power Analysis”



## C. Conducting a “Power Analysis”<sup>1</sup>

Advocates seeking to influence the planning process must understand the motivations and interests of decisionmakers and stakeholders. Power analysis involves examining the people involved in a process, what type of power they have, and mapping interrelationships and sources of influence. Often in government individuals with no official decisionmaking authority wield power from behind the scenes with financial or other leverage. Part of a power analysis involves identifying “targets” for advocacy and what power they have. To move the primary target, advocates must understand the target’s self-interests. Most importantly, we must understand our own power to affect the target. We can compel compliance with applicable laws but to be truly effective, we should also conduct a “power analysis” of the target’s other motivations. While this manual mainly focuses on legal compliance, it is important to conduct a power analysis to determine whether your goals can be achieved through a faster political process.

### Types of Power

- *People*—multitudes wield power when they act in a coordinated way such as when voting or withdrawing cooperation in civil disobedience
- *Relational*—people who have access to and influence other people with power
- *Financial*—people who use money to influence decisions such as through political donations
- *Positional power*—people who wield power by virtue of their positions
  - Elected officials
  - Planning commission members
  - Agency directors

The power analysis should examine all decision-makers and major stakeholders. Stakeholders are people affected by or interested in the planning decisions. Interests can be financial, political and relational. For the most part, stakeholders are the same people who were consulted for

---

<sup>1</sup> There are many models for how to conduct a power analysis. The discussion here is a simplified version of one model. For a more comprehensive discussion of this and other models, see Power Tools’ *Stakeholder Power Analysis* by James Mayers, International Institute for Environment and Development, [http://www.policy-powertools.org/Tools/Understanding/docs/stakeholder\\_power\\_tool\\_english.pdf](http://www.policy-powertools.org/Tools/Understanding/docs/stakeholder_power_tool_english.pdf); or SCOPE LA at <http://scopela.org/>.

information about the need for affordable housing in the community. They are also people who may oppose affordable housing in the community. Opposition may be caused by ignorance caused by an irrational fear of low-income people in general or declining housing values. It may also be caused by racism, disguised by arguments of traffic concerns, overcrowding of schools and the like.

### **Potential Supporters of Affordable Housing**

- Current residents and people in need of affordable housing, including:
  - People with physical and/or mental disabilities
  - Tenants
  - Owner-occupants
  - Renters with income below 30% of median area income
  - Renters with income below 50% of median area income
  - Renters with income below 80% of median area income
  - People who are homeless
  - Farmworkers
- Community institutions whose membership need affordable housing
  - Churches
  - Schools
  - Unions
  - Community organizations
- Affordable housing developers and their investors
  - For profits
  - Non-profits
  - Shelters (domestic violence, homeless, etc.)
  - Transitional and shelter housing providers
- Affordable housing advocates
  - Tenant organizers
  - Legal services attorneys
- Investors in affordable housing

### **Potential Opponents of Affordable Housing**

- Current residents of market-rate housing, homeowners
- Developers of market rate housing
- Commercial developers of upper-income developments
- Environmental and slow-growth advocates opposed to additional developments or increased population
- Realtors
- Community institutions whose membership does not need affordable housing
  - Churches, private schools, country clubs, political clubs

By using the chart below, advocates can graph the applicable stakeholder power and the potential for sharing their self-interests or, if representing low-income people, the interests of their clients. When charting the stakeholders, advocates should determine their own power to influence decision-makers as well as their power to influence other stakeholders.

### Sample Stakeholder Power Analysis

Most Powerful  
Least Shared Interest

Most Powerful  
Most Shared Interest

Moderate Power  
Least Shared Interest

Moderate Power  
Moderate Shared Interest

Moderate Power  
Most Shared Interest

To better understand who can influence elected officials, consider the following factors:

- Where is their constituency?
- Who are their political bases?
- Who donates to their campaign?
- What constituted their winning election margin?
- When is their term over and what seat will they run for then?
- Could your constituency influence a future election?
- What will it take to get them to be your champion?

A power analysis helps provide an understanding of the self-interest of each stakeholder. It helps determine which stakeholders are potentially aligned with our self-interests or the interests of our clients. We can identify also which potential stakeholder has influence over a decision-maker.

After conducting the power analysis, advocates should ask, “Does our client or group have what it takes to move the target?” If not, there is a need for allies. However, even if the power exists to move the target, it may still be essential to incorporate allies into the advocacy process, especially if there is strong opposition to affordable housing. Allies can be determined by asking:

- What organizations share your mission, or the interests of your clients?
- What organizations will help because of your relationship with them?
- What individuals/organizations with power do you have a relationship with?

The answers to these questions are the organizations we should consider for allies. Prioritize the list and conduct research and meet with representatives from each of the organizations to find out where they are on the Power Analysis chart and whether the organization is a potential partner in the advocacy effort.

While allies bring resources and influence, they can also limit control. Allies will expect to have some ownership of the campaign. The more allies enlisted, the less control the originating advocate may have. Keep this in mind by bringing in only allies who offer real value to the campaign or who will help establish an administrative record if litigation is anticipated.

## Appendix D: Tips for Conducting Private Meetings with Decision-Makers

## D. Tips for Conducting Private Meetings with Decision-Makers

Private meetings are meetings where you and your allies meet with a decision-maker without others being present.

- **Purpose of your meeting**
  - Gather information from target, including:
    - Facts, documents
    - Target's position on issue
    - Other decision-maker's positions on issue
  - Influence target to support your position by giving information that:
    - Explains strengths of your position
    - Explains weaknesses of your opponent's position
    - Explains why your position is good for the community and/or specific groups that you represent
- **Whom to meet with**
  - Someone who can help get you what you want
    - Legislator or her staff person?
      - Insist on meeting with legislator unless the aide or staffer can help you get what you want, but be respectful of the knowledge and influence staff people have. Developing positive working relationships with staff people is a critical way to develop your influence.
      - You may have to or want to meet with the staff person if the staff person knows more about the issue than the legislator and she has demonstrated influence with the legislator.

- **Getting the meeting**

- Direct ask:
  - You, your organization or an ally directly contacts the target.
  - If the target is an elected official or an executive type, you probably will have to go through a staff person. Ask the highest ranking staff person whom you have a relationship with. This is usually more effective than making a general request to the office.
  - Whether you get the meeting usually depends on your credentials with the target. Know your target. Whom does she respect? Who can influence her? What does she care about? Frame your meeting request around these answers to enhance your chances of getting the meeting.
  - If you do not have sufficient influence over the target, the direct ask may not be effective.
- Broker ask:
  - Use your power analysis and stakeholder list to identify a broker. A broker is someone you know who also knows the target and can use her influence on your behalf to broker a meeting. Part of preparation for meeting with a target should include identifying other targets that this target could broker a meeting with. When you meet with a target, ask if she would help you set up a meeting with another target.
- The contacts you make in trying to get a meeting can help you later on. Be polite and respectful in your interactions. The person who is unhelpful this time around might be critical to you next time you are trying to influence a decision-maker.

- **Preparing for the Meeting**

- Goal: Make the meeting “your meeting.” Your agenda, your location, the people you want at the table. Consider holding the meeting in at a location in the community that will help the decision-maker understand your concerns. For example, if you are concerned about dilapidated conditions in subsidized housing, ask the decision-maker to meet with you in the community room of a housing development that needs repair.
- Plan an agenda that you will propose at the meeting.

- A good agenda is simple—four or five points with an assigned time for each section. The following is a list of possible agenda items:
  - Introductions. Let the target know what institution or constituency you represent. Frame it in a way that highlights your leverage with the target. For example, mention that you're a constituent or that you are a member of an organization that is in the district or that you know someone who influences the target.
  - Frame
    - Someone from your team frames the purpose of the meeting—why you are here
  - Ask for what you want from the target
    - The “Ask” adds tension and purpose to a meeting. The Ask could be for:
      - Target's action/support on an issue
      - Access to a document or information
      - Target's agreement to another meeting
      - Target's agreement to broker a meeting with a different target
    - Be prepared to educate. The target may not know what he or she needs to know about the issue to get you what you want.
    - Be prepared to negotiate. You don't often get everything you want but you can almost always get some of what you want.
  - Next steps
    - What else needs to happen to get the target to do what you want the target to do? This could be summarizing what everyone at the meeting agreed to do. Make sure you agree on who will do what, deadlines, and how the information will be shared. If you want another meeting with the target, schedule it during “Next Steps.”



- Choose who will attend for you
  - Choose based on:
    - Ability to influence the target
      - People directly affected by the issue are often effective communicators, although that does not mean they necessarily will influence the target.
    - Familiarity with topic and persuasive when talking about it
    - Skills you want to develop in your organization
  - If the target is resistant to having everyone you want to attend, gently remind her of who you are and what leverage you bring. Remind her that you build leadership through experience at meetings like these; you represent a diverse group of people and you want the group to reflect that.
- Assign meeting responsibilities
  - Facilitator
    - Proposes agenda at the meeting
    - Frames your side of the issue
    - Ensures all agenda topics are covered
    - Ensures people assigned to speak get to speak
    - Keeps the meeting on topic
  - Notetaker
    - Important but often overlooked. Document what happened as it's easily forgotten. Notes should be typed up and circulated within a few days of the meeting.
  - Speakers on each agenda item or issue
    - Choose according to:
      - Ability to influence the target

- Familiarity with topic and persuasive when talking about it
- Skills you want to develop in your organization.
- **At the meeting:**
  - Initiate the discussion
    - Your facilitator should initiate the introductions, frame why you are there and then propose the agenda. This will help make it your meeting. Usually the party that takes the lead at the meeting in proposing an agenda gets the agenda adopted, with perhaps a few additions from the other party.
    - If the target is particularly assertive with her agenda, offer a compromise that addresses the target's concerns but also meets your needs.
  - Stay on topic
    - Don't raise extraneous or personal issues. Stick to the agenda. A little getting-to-know-you at the beginning is good but once you get to the agenda items, stick to them.
  - Tone
    - Always be respectful, whether meeting with friend or foe. Your style should reflect your values. Disrespect can come back to bite you when trying to work with other people.
    - Always insist on being treated with respect.
    - Don't defer just because the target is in a position of authority. Respect does not mean deference. This may mean saying the difficult thing when it needs to be said.
  - Listen
    - If you are meeting to get information or to find out the position of the target, listen when the target is doing what you came for:
      - Speaking from the heart
      - Explaining relevant information
      - Explaining his or her position

- It is tempting to offer a favorite story or joke or make a withering critique but don't do so if it means you are interrupting the target from talking about what you need to hear.
  - You don't have to just listen when others are talking off topic. Politely interrupt and bring them back on topic.
- Speak in order to:
  - Ask for what you want
  - Put target back on topic
    - Targets, especially politicians, will talk about everything. If you are running out of time and have not addressed key points, politely interrupt and bring them back on topic.
  - Convey your position
  - Clarify your position
  - Share relevant information
  - Establish trust
- **Immediately after the meeting**
  - Debrief: Once you are out of seeing and hearing distance from the other side, gather your team together and evaluate the meeting.
    - Acknowledge the good work of your colleagues.
    - Point out areas to improve without unnecessary negativity.
    - Evaluate whether the goals of the meeting were achieved.
    - Identify next steps, who is going to do them and by when.
- **Follow up with the decision-maker and her staff**
  - Within a day or two of your meeting, follow up with an email thanking the decision-maker for the meeting. Make sure to thank staff members or others you met with or who helped you set up the meeting.
  - Keep your message brief: a few sentences regarding your discussion and identifying any action items you discussed. Thank the target in advance for completing any action items discussed at the meeting.
  - The goal of your message is to keep lines of communication open.

- Following up with a thank you and action items will make a friendly decision-maker more likely to take action to support your position. It may also make her think of you when this issue comes up again, and encourage her to contact you when other related issues impacting your community arise.
- If the decision-maker did not seem supportive of your position during the meeting, a thank you will demonstrate your professionalism and can serve as a way to give you an opportunity to identify points of agreement. It also leaves the door open for future conversations when other issues arise where you may have more common ground.

## Appendix E: Sample Community Benefits Agreement

# Plaza Pacoima Project Community Benefits Agreement

## Section I. Purpose

The purpose of the Community Benefits Agreement for the Project is to provide for a concerted and coordinated effort by the City, the CRA/LA, and Developer to maximize the benefits of the Project to the members of the surrounding community. It shall also serve to maximize community involvement in the planning, development, and use of area resources to ensure that local and low-income individuals residing in the surrounding community benefit from the Project. For these reasons, and in consideration of mutual promises, undertakings, and covenants, the adequacy of which the Coalition and Developer hereby acknowledge, the Coalition and Developer, on behalf of themselves and their respective successors, partners, and assigns, agree to the terms set forth in this Community Benefits Agreement.

## Section II. Definitions

As used in this Community Benefits Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and the plural form.

“CRA/LA” shall mean the Community Redevelopment Agency of the City of Los Angeles.

“City” shall mean the City of Los Angeles.

“Coalition” shall mean the Pacoima Community Benefits Agreement Partners, as represented by Neighborhood Legal Services.

“Community Area Resident” is defined in the Policy.

“Developer” shall mean Plaza Pacoima LLC, a Delaware limited liability company.

“Disadvantaged Worker” is defined in the Policy.

“Jobs Coordinator” is defined in the Policy.

“Local Residents” is defined in the Policy.

“Owner Participation Agreement” shall mean that certain Owner Participation Agreement to be entered into by CRA/LA and Developer, dated as of June \_\_, 2008.

A. “Policy” shall mean the Full Local Hire Program, attached hereto as Attachment A.

“Project” shall mean the development of the Property as contemplated in the Owner Participation Agreement.

“Project Area” shall mean the Earthquake Disaster Assistance Project for Portions of Council District 7 Redevelopment Project Area.

“Property” shall mean the approximately 17.55 acre parcel of real property located at Paxton and Sutter Streets in the City of Los Angeles and more particularly described in the Owner Participation Agreement.

“Qualified Recruitment Organization” is defined in the Policy.

“Tenant” shall mean any entity that enters into a lease agreement or similar agreement for use of space within the Project.

### Section III. Full Local Hire Program

A. **Compliance with Policy.** Developer agrees to comply with the provisions of the Policy.

B. **Additional Responsibilities of the Jobs Coordinator.** In addition to the responsibilities of the Jobs Coordinator set forth in the Policy, Developer agrees to include as part of the Jobs Coordinator’s job responsibilities the following:

1. **Additional outreach for Construction Jobs.** The Jobs Coordinator shall provide services in support of the Developer’s local hire requirements for construction jobs (Section 1 of the Policy) as follows:

- No less than 30 days before construction begins, provide information about available job opportunities to the following listed referral sources (each a “Participating Referral Source”):
  - Chrysalis
  - Communities in Schools
  - Northeast San Fernando Valley Worksource Center
  - National Association for the Advancement of Colored People – San Fernando Valley Branch
- If such jobs require union membership, provide notice as soon as reasonably possible to the Participating Referral Sources listed above about the requirements and process for entry into approved apprenticeship programs
- Facilitate relationships among Participating Referral Sources and contractors on the project to enable prompt referrals

2. **Additional outreach for Permanent Jobs.** The Jobs Coordinator or Qualified Recruitment Organization, whichever is applicable, shall provide services in support of the Tenant's local hire requirements for permanent jobs (Section 2 of the Policy) as follows:

- Provide information about available job opportunities to the Participating Referral Sources as soon as such job opportunities become known to the Jobs Coordinator or Qualified Recruitment Organization and as early in the preferential notification period for the open job as possible
- Facilitate relationships among Participating Referral Sources and employers to enable prompt referrals

C. **Coalition Responsibilities.** Coalition Representatives will coordinate with employers and Participating Referral Sources to refer Community Area Residents, Local Residents and Disadvantaged Workers (collectively, "Qualified Employees") to the Jobs Coordinator or Qualified Recruitment Organization, whichever is applicable. Participating Referral Sources will use commercially reasonable efforts to refer Qualified Employees to the Jobs Coordinator or Qualified Recruitment Organization. If a Participating Referral Source fails to refer Qualified Employees to the Jobs Coordinator or Qualified Recruitment Organization, Developer, Jobs Coordinator or Qualified Recruitment Organization shall contact the Coalition and that Participating Referral Source in order to confirm that no such referrals were made. If a Participating Referral Source fails to provide any referrals on three (3) consecutive occasions at no time extending beyond five (5) business days, the Developer, its general contractor and any employers at the Project site shall have no further responsibility to contact that Participating Referral Source with regard to job opportunities.

## Section IV. Living Wage Policy

### A. **Developer Responsibilities Regarding Living Wages.**

1. **Compliance with Living Wage Ordinance.** Developer and its general contractor shall comply with the provisions of the City's Living Wage Ordinance, set forth in the Los Angeles Administrative Code, Section 10.37, to the extent such ordinance is applicable. Developer shall use commercially reasonable efforts to persuade Tenants to comply with the Living Wage Ordinance.

2. **Seventy-five Percent Living Wage Goal.** Developer shall use its commercially reasonable efforts to maximize the number of living wage jobs in the Project. Developer and the Coalition agree to a goal of maintaining at least 75 percent of the jobs in the Project as living wage jobs (the "Living Wage Goal"). Developer and the Coalition agree that this is a reasonable requirement in light of



all the circumstances. Achievement of the Living Wage Goal shall be measured each year on January 1, commencing on the first January 1 after the Project is operational, and shall be reported annually, as described below in Section IV.A.5. In the event that actual performance is less than 75 percent of the Living Wage Goal for two consecutive years, Developer shall promptly meet and confer with the Coalition to determine mutually agreeable steps which can and will be taken to meet the Living Wage Goal. Whether or not the Living Wage Goal is being met at each annual measurement, Developer shall be considered to be in compliance with this Section IV.A.2 if it is in compliance with Sections IV.A.5 and IV.A.6 below. Moreover, Developer's failure to meet the Living Wage Goal shall not be a breach or default under this Agreement or the Owners Participation Agreement.

3. **Exemption for Small Businesses.** Developer's responsibilities as set forth in Section IV.A.2 above shall not apply to jobs at businesses that occupy less than 5,000 square feet of space within the Project.

4. **Calculation of Proportion of Living Wage Jobs.** For purposes of determining the percentage of living wage jobs in the Project, the following jobs shall be considered living wage jobs:

- Jobs covered by the City's Living Wage Ordinance;
- Jobs for which the employee is paid on a salaried basis of at least \$19,673.60 per year if the employee is provided with employer-sponsored health-insurance, or \$22,796.80 per year otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance);
- Jobs for which the employee is paid at least \$9.71 per hour if the worker is provided with employer-sponsored health insurance, or \$10.96 per hour otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance); and
- Jobs covered by a Collective Bargaining Agreement.

The percentage of living wage jobs in the Project will be calculated as the number of on-site jobs falling into any of the above four categories, divided by the total number of on-site jobs. No part of this calculation shall take into account jobs covered by the exemption for small businesses, described in Section IV.A.3 above. The resulting number will be compared to the Living Wage Goal to determine whether the Living Wage Goal has been met.

5. **Reporting Requirements.** Developer will use commercially reasonable efforts to attempt to gather the information required and to provide an

annual report to the CRA/LA on the percentage of jobs in the Project that are living wage jobs. Such report will be in form and substance as reasonably acceptable to the CRA/LA. If the report indicates that the Living Wage Goal is not being met, Developer will include as part of the report an explanation as to why that is the case. In compiling this report, Developer shall be entitled to rely on information provided by Tenants and its general contractor, without responsibility to perform independent investigation. This report shall be filed for any given year or partial year by April 30<sup>th</sup> of the succeeding year.

Developer will provide copies of such annual report to the Coalition.

6. **Selection of Tenants.** Notwithstanding anything in this Agreement to the contrary, the provisions of this Section IV.A.6 shall not apply to Costco, Best Buy, any brand name bank, any Tenant occupying less than 5,000 square feet, or other party approved by CRA/LA as set forth in the Owner Participation Agreement. With respect to any other prospective Tenants, the following shall apply:

a. **Developer Notifies Coalition Before Selecting Tenants.** At least 45 days prior to executing any lease agreement or other contract for space within the Project, Developer shall notify the Coalition of the identity of the prospective Tenant, and shall, at the Coalition's request, meet with the Coalition regarding the prospective Tenant's impact, if any, on the Living Wage Goal. If exigent circumstances so require, notice may be given less than 45 days prior to signing such a lease agreement or other contract; however, in such cases Developer shall at the earliest possible date give the Coalition notice of the identity of the prospective Tenant and, at the Coalition's request, meet with such Tenant on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract for space within the Project.

b. **Coalition Meeting with Prospective Tenants.** At least 30 days before signing a lease agreement or other contract for space within the Project, Developer will arrange and attend a meeting between the Coalition and the prospective Tenant or Tenant's representative, if the Coalition so requests. At such a meeting, the Coalition and Developer will discuss with the prospective Tenant the Living Wage Goal and Developer will assist the Coalition in encouraging participation in this program. If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible dates and shall in any event occur prior to the signing of the lease agreement or other contract for space.

c. **Consideration of Impact on Living Wage Goal.** When choosing between prospective Tenants for a particular space within the Project,

Developer will, within commercially reasonable limits, take into account as a substantial factor each prospective Tenant's impact on achievement of the Living Wage Goal.

d. **Tenants Agree to Reporting Requirements.** Tenants are not required to participate in the Living Wage program. However, all Tenants shall make annual reports as set forth in Section IV.B.1 below. Developer will use commercially reasonable efforts to include these reporting requirements as a material term of all lease agreements or other contracts for space within the Project.

#### **B. Tenants' Reporting Requirements.**

1. **Annual Report.** Developer shall use commercially reasonable efforts to have each Tenant report to Developer its number of on-site jobs, the percentage of these jobs that are living wage jobs, and the percentage of these jobs for which employees are provided with health insurance by the Tenant in form and substance as set forth in the Owner Participation Agreement. Tenants need not include precise salaries in such reports; rather, with regard to wages, Tenants need only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section IV.A.4 above. Such reports shall be filed for any given year or partial year by April 30 of the succeeding year and shall use January 1 as the date for determining the number of jobs and percentage that are living wage jobs.

2. **Term.** All provisions and requirements of this Section shall terminate and become ineffective for each Tenant five years from the date of that Tenant's first annual report submitted pursuant to Section IV.B.1 above.

### **Section V. Security**

A. **Security during construction of the Project.** Developer agrees that it will require that the site be secured during construction. Developer shall provide and maintain, or cause to be provided or maintained, a security management trailer on the Project site during the duration of construction and ensure that it is adequately staffed at all times to maintain the safety and security of the Project site during construction.

B. **Security during the post-construction operations of the Project.** Developer agrees that it will provide or request that Tenants provide adequate on-going private security for the Project site once the Project is constructed and open to the public. This security system shall include the following measures.

1. **On-Site Security Staffing.** Once the Project is constructed and open to the public, Developer shall use commercially reasonable efforts to

provide, or cause to be provided, on-site, unarmed security guards at all times during the Developer's regular business hours. Regular business hours shall be measured from the earliest time that any one of the Tenants is open until the latest time that any one of the Tenants closes. At all other times, Developer shall maintain or cause to be maintained, within commercially reasonable limits, an adequate private security system to ensure the safety and security of the Project site, including without limitation, the provision of security cameras throughout the Project site.

2. **Coordination with Lowe's Home Improvement.** Developer agrees that it shall use its commercially reasonable efforts to coordinate its security system and security policies and procedures with adjacent property owner, Lowe's Home Improvement, to ensure the adequate safety and security of the Project site.

3. **Coordination with the community.** Developer agrees that it shall establish and make available a security policy that includes a communication mechanism for community members to raise security-related concerns with the management of the Project. This policy shall include the designation of a contact person for security-related issues.

4. **No Security Bars or Fences.** Other than as specified on Exhibit B, Developer agrees to use commercially reasonable efforts to prohibit Tenants from placing security bars on the exterior portion of its windows, excluding operable roll down gates and security screens for non-business hours. In order to accomplish this, Developer agrees to use commercially reasonable efforts to include such a restriction as a material term of all lease agreements or other contracts for space within the Project.

## Section VI. Business Improvement District

Developer agrees that it shall support any reasonable attempt to develop a Business Improvement District in Pacoima that includes the Project within its boundaries. This means that Developer shall vote in favor of adoption of a commercially reasonable Business Improvement District, similar to those in like-kind communities, in any vote held for that purpose.

## Section VII. Cultural Arts Fund

A. **Establishment of a local cultural arts fund.** Prior to the construction of any buildings on Property and after CRA/LA funding has been received and building permits have been issued (excluding any demolition, grading and environmental remediation activities), Developer shall provide to CRA/LA \$300,000 to be deposited into a CRA Cultural Trust Fund for the benefit of the Pacoima Community. It is the intention of the Parties that (1) CRA/LA provide the Coalition with the proposed criteria for such Cultural Trust Fund to ensure that the intended goals of the Coalition cultural

arts projects are consistent with such proposed Cultural Trust Fund criteria, and (2) CRA/LA establish a process to receive Coalition input regarding the particular cultural arts project or projects to be funded. Notwithstanding the foregoing, Developer's obligations with respect to this Section VII.A. shall be met by payment of such \$300,000 to the CRA/LA, and Developer shall have no further obligations under this Section VII.A.

B. **Public art fund.** Developer shall comply with the CRA/LA's Art Policy and satisfy Owner's Public Art Policy Obligation as set forth in the Owner Participation Agreement.

## Section VIII. Environmental Mitigations

A. **Leadership in Energy and Environmental Design (LEED) Silver Level Certification.** Developer agrees that the Project will be designed and constructed with the intent to meet the certification criteria at the Silver level under the LEED Green Building Rating System established by the U.S. Green Building Council or consistent with a comparable certification process acceptable to the CRA/LA.

B. **Independent third party monitoring.** Developer agrees to retain an independent third party consultant to monitor the Project site and Project for environmental issues. Developer agrees to provide the contact information for such consultant to the CRA/LA so that the CRA/LA can raise questions related to environmental issues and remediation of the Project site directly with the consultant; provided, however, that Developer shall have approval rights over any work conducted by the consultant.

C. **On Site walking path.** Developer agrees to create or to ensure the creation of a lighted walking path from the parking lot to each Tenant that occupies more than 40,000 square feet on the Project site.

D. **No idling on Site or on adjacent roads.** Developer agrees to prohibit trucks that are serving the Project from idling on the Project and on the roads adjacent to the Project site, including Paxton Street, Bradley Avenue, Sutter Avenue, and Louvre Street. Developer shall post no idling zone signs throughout the Project site and along the perimeter of the Project site adjacent to the aforementioned public roads to prevent truck idling. Developer agrees to use commercially reasonable efforts to enforce these idling prohibitions and to direct idling trucks to turn off their engines promptly.

E. **Preference for low-emission contractors.** Developer agrees to give special consideration, during the process of selecting a general contractor for the construction of the Project, to those contractors who employ low emissions equipment and vehicles and who use particulate traps on their equipment and vehicles. Developer agrees to state this preference, provided it is commercially reasonable, in any document that it creates for the purpose of soliciting a bid from a general contractor for construction of the Developer.

**F. No heavy maintenance of construction equipment on Project site.**

Developer agrees to prohibit the heavy maintenance of construction equipment on the Project site. Heavy maintenance shall be defined to include any maintenance beyond the regular daily maintenance that would be necessary for the equipment to function in the normal course of construction. Developer agrees to use commercially reasonable efforts to include this prohibition as a condition in all of its contracts with all of the construction contractors and subcontractors who will be working on the Site.

**G. Mitigated Negative Declaration.** Notwithstanding the foregoing, to the extent the terms of this Section VIII. are inconsistent with the requirements set forth in Developer's entitlements and mitigations for the Project pursuant to the mitigated negative declaration for the Project, the terms set forth in the mitigated negative declaration shall control.

**Section IX. Prohibition on Check Cashing Businesses and Payday Lenders**

**A. Prohibition on Check Cashing Businesses and Payday Lenders.**

Developer agrees that no business which engages in check cashing or payday lending (also known as a deferred deposit transaction) as a primary activity shall become a Tenant at the Project. This prohibition shall include any business that offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. This prohibition shall not preclude traditional banking institutions and/or credit unions that are insured by the FDIC from becoming a Tenant in the Project.

**B. Developer to Market Site to Traditional Banking Institutions and/or Credit Unions.** Developer agrees that it shall use commercially reasonable efforts to market space in the Project to traditional banking institutions and/or credit unions in an effort to attract such banks or credit unions to become a Tenant at the Project.

**Section X. Community Oversight Committee**

**A.** Upon execution of this Agreement, a Community Oversight Committee (the "Committee") will be formed and comprised of designated representatives from the CRA/LA and the Coalition. If requested by the Committee, Developer shall meet with the Committee on a quarterly basis. At such meetings, all parties will engage in a cooperative effort to develop strategies for successful implementation of the provisions of this Agreement. Upon request by the CRA/LA or the Committee, Developer shall provide to the requesting party access to Project site, during normal business hours, to enable the requesting party to monitor implementation of the Agreement. Developer shall provide sufficient information to the Committee to enable it to monitor implementation of all sections of this Agreement.

IN WITNESS WHEREOF, the parties hereto caused this Community Benefits Agreement to be duly executed by their respective officers.

Dated: \_\_\_\_\_

Plaza Pacoima LLC

By:

Dated: 7/1/08

Pacoima Community Benefits Agreement  
Partners

By:

*Josh Stehlik*  
Josh Stehlik

By:

*Leroy Gater*  
Leroy Gater

## FULL LOCAL HIRE PROGRAM

### Attachment "A"

#### Section 1: Construction Jobs Local Hire Program

##### Utilization of Project Area Residents: Construction Jobs Local Hire Program

One of the purposes of this Agreement and the assistance provided by CRA/LA is to provide employment opportunities for the local population.

The Developer agrees to implement and to require all its contractors to implement, for the duration of construction on the project, a Local Hire Program as defined below:

#### A. LOCAL HIRING REQUIREMENTS

##### 1. The following percentages shall be achieved for the project:

##### a. 30% of all construction work hours shall be performed by:

- i. **Community Area Residents**, which means individuals whose primary place of residence is within the City of Los Angeles and within three miles of the Project Area's border; or
- ii. **Local Residents**, which means individuals whose primary place of residence is within the City of Los Angeles and is within a zip code containing at least part of one census tract with a rate of unemployment in excess of 150% of the Los Angeles County unemployment rate, as reported by the State of California Employment Development Department.
- iii. Priority shall be given to Community Area Residents. The zip codes in which a Community Area Resident and Local Resident may live shall be provided by the Community Redevelopment Agency of the City of Los Angeles (CRA/LA).

##### b. 10% of all construction work hours shall be performed by **Disadvantaged Workers**. The Disadvantaged Worker hours may count towards the 30% Community Area and Local Resident requirement, and/or the 50% Community Area and Local Resident Apprentice requirement. A Disadvantaged Worker means an individual whose primary place of residence is within the City of Los Angeles, and who, prior to commencing work on the project either:

- i. Has a household income of less than 50% of the Area Median Income (AMI), or
- ii. Faces at least one of the following barriers to employment: being homeless; being a custodial single parent; receiving public assistance; lacking a GED or high school diploma; having a criminal record or other involvement with the criminal justice system; or suffering from chronic unemployment.



- c. **A minimum of 50% of all hours worked by construction Apprentices shall be performed by Community Area Residents and Local Residents.** Priority shall be given to Community Area Residents. An Apprentice means any worker indentured in a bona fide construction apprenticeship program registered and approved by the State of California, Division of Apprenticeship Standards.
2. The status of a Disadvantaged Worker shall be certified by a Jobs Coordinator, described in Section B. 5.
3. The construction employer retains authority in making individual hiring decisions.
4. Hours worked by permanent residents of states other than California do not count towards total work hours when calculating the Local Hire Requirements.

## **B. REQUIREMENTS**

1. **Local Hire Schedule.** The Developer shall develop a Local Hire Schedule that establishes the hiring process and approximate timetable to be followed by the Developer and all contractors for construction hiring to achieve the overall requirements of the Local Hire Program. The Local Hire Schedule shall provide the basis for the CRA/LA's monitoring of the project and for the Jobs Coordinator's preparation of local worker candidates. The Local Hire Schedule must be submitted to the CRA/LA Compliance Supervisor no less than thirty (30) days before construction begins, and shall be approved or disapproved by the CRA/LA Chief Executive Officer (CEO) or designee within two weeks of submittal by the Developer. The Developer shall not start construction without an approved Local Hire Schedule.
2. **Local Hire Orientation.** Before construction begins, the Developer shall contact the CRA/LA to schedule a Local Hire Orientation with its contractors. The purpose of this orientation is to help all contractors on the project understand the Local Hire Program, Local Hire Requirements, reporting requirements, role of the Jobs Coordinator, and answer questions. The Local Hire Orientation may take place concurrently with the pre-construction meeting, if applicable. To arrange for the Local Hire Orientation, the Developer shall contact: Jim Larkin, Compliance Supervisor, CRA/LA, 354 S. Spring Street, Suite 600, Los Angeles, CA 90013, (213) 977-1600 or [jlarkin@cra.lacity.org](mailto:jlarkin@cra.lacity.org).
3. **Maximizing Apprentices.** The Developer's contractors shall use the maximum number of Apprentices allowed by law.
4. **Coordination with unions (if applicable).** The Developer's contractors that have an agreement with a construction union shall use the following procedures and shall inform each relevant union of these requirements:
  - a. The Developer's contractors shall give priority to Local Residents, Community Residents, and Disadvantaged Workers and shall promptly notify the CRA/LA Compliance Supervisor of any union that fails or refuses to refer Local Residents, Community Residents, and Disadvantaged Workers for jobs on projects receiving CRA/LA financial assistance.
  - b. The Developer's contractors shall sponsor any qualified entry-level Disadvantaged Worker as a first period apprentice and shall indicate this by

sending a letter or form, as appropriate, to the relevant union or apprenticeship program expressing a commitment to sponsor the Disadvantaged Worker in question (e.g. hiring the individual to enable his/her entry into an apprenticeship program).

- c. The Developer's contractors shall use a Craft Request Form provided by the CRA/LA, a document through which contractors shall request workers from unions. The Developer's contractors shall send copies of all Craft Request Forms to the Jobs Coordinator at the same time as they are submitted to the unions. All copies of all Craft Request Forms submitted and/or received, including transmission verification documents that are date/time imprinted or a log of related faxes sent and received regarding Local Hire Requirements shall be maintained and submitted to the CRA/LA when requested.

**5. Jobs Coordinator.** The Developer shall hire a Jobs Coordinator from the CRA/LA list of pre-qualified firms in order to meet the requirements of the Local Hire Program. A Jobs Coordinator means an independent third-party entity with whom the Developer's contractors work to facilitate implementation of the Local Hire Requirements. Notwithstanding the availability of the Jobs Coordinator to assist, the Developer is solely responsible for achieving the Local Hire Requirements.

- a. Each of the Developer's contractors shall use a Craft Request Form provided by the CRA/LA, a document through which contractors shall request workers from the Jobs Coordinator.
- b. The Jobs Coordinator shall provide services in support of the Developer's Local Hire Requirements including:
  - i. establish a point of contact to provide information about available job opportunities;
  - ii. certify the status of Disadvantaged Workers;
  - iii. reach out to targeted populations;
  - iv. conduct or coordinate programs to prepare interested residents to enter construction jobs;
  - v. develop and maintain an up-to-date list of qualified City residents;
  - vi. facilitate relationships among approved apprenticeship programs and contractors to enable prompt referrals;
  - vii. educate contractors regarding tax deductions, tax credits and other benefits for which they may be eligible based on their implementation of the Local Hire Requirements; and
  - viii. assist contractors with reporting by working with contractors and the CRA/LA or authorized representative where appropriate.

**6. Local Hire Report.** The Developer shall report quarterly to the CRA/LA on the progress of the Local Hire Program in a format to be determined by the CRA/LA. The report shall detail the number of (i) Community Area Residents, (ii) Local Residents, (iii) Disadvantaged Workers, (iv) Community Area and Local Resident Apprentices, (v) total Apprentices, and (vi) all other City residents and/or non-residents that have been hired by all contractors; the number and percentage of work hours that have been performed by each category of worker for that specific reporting period; and in aggregate since the inception of the project. If requested by the CRA/LA, the Developer shall require any contractor to provide copies of payroll records to verify the Local Hire Report. All Local

Hire Reports, the Local Hire Schedule, and payroll records shall be sent to: Jim Larkin, Compliance Supervisor, CRA/LA, 354 S. Spring Street, Suite 600, Los Angeles, CA 90013 or [jlarkin@cra.lacity.org](mailto:jlarkin@cra.lacity.org).

### **C. DEMONSTRATION OF COMPLIANCE**

1. If the Developer has met or exceeded all Local Hire Program targets, the Developer is in compliance.
2. If the Developer has not met or exceeded all Local Hire Program targets but has satisfied each element of the list of activities below, the Developer or contractor is in compliance:
  - 1) Develop and submit a CRA/LA-approved Local Hire Schedule 30-days prior to construction start;
  - 2) Convene a pre-bid meeting, if applicable, and a Local Hire Orientation prior to construction start;
  - 3) Ensure that all contractors contractually agree to comply with terms of Local Hire Program and obtain letters of assent from each contractor;
  - 4) Hire a Jobs Coordinator from the CRA/LA's pre-qualified list of firms; regularly contact and document contact with a Jobs Coordinator;
  - 5) Use and document use of CRA/LA-approved Craft Request Forms sent to construction unions, if applicable, and Jobs Coordinator;
  - 6) Document waiting period for requested referrals and any lack of responses from unions, if applicable, and Jobs Coordinator;
  - 7) Document reasons for not hiring referred candidates from target populations, if applicable;
  - 8) Submit quarterly Local Hire Reports in a timely manner; and
  - 9) Allow CRA/LA monitor prompt and willing access to documentation of above activities.

#### D. NON-COMPLIANCE

1. The Developer shall monitor and enforce the Local Hire Program requirements imposed on all of its contractors, including withholding payments to those contractors who violate these requirements.

Approval of  
Section D.2  
to be  
initialed by:

Developer:

CRA/LA:

2. (a) In the event that the Developer is out of compliance and fails to monitor or enforce the requirements of this program against any contractor, the Developer shall be liable for the full amount of any liquidated damages, assessed at the average project wage for each hour that the project was short of the goal

(b) The CRA/LA and the Developer agree that injury to the CRA/LA and the public caused by non-compliance to this Local Hire Program will be difficult or impossible to accurately estimate; and that the liquidated damages specified in this Section D.2 are a reasonable estimate of the probable loss.

3. The CRA/LA may withhold monies owed to the Developer, may impose liquidated damages on the Developer in the amounts specified herein, and/or may declare the Developer and or any of its contractors non-responsible and be debarred from further contracts for a period of two years in conformance with the CRA/LA's Policy on Contractor Responsibility.
4. In the event the Developer disputes either the determination of non-compliance, the calculation of liquidated damages, or a declaration of non-responsibility, the Developer may appeal to a panel appointed by the CRA/LA CEO, with final appeal to the CRA/LA Board of Commissioners.

- E. The CRA/LA CEO shall have the authority to amend or modify provisions of this program as reasonably necessary to carry out the purpose of this Agreement and carry out the objectives of the parties.

#### Section 2: Permanent Jobs Local Hire Program

##### Utilization of Project Area Residents: Permanent Employees Local Hiring Program

For the purposes of this Program, all capitalized terms shall have the meanings specified in the Owner Participation Agreement ("Agreement").

The Developer agrees that all Tenants shall implement a Permanent Employees Local Hiring Program ("Program"). The Term of the Program shall be the ten (10) year period commencing on the date that the first certificate of occupancy is issued by the City of Los Angeles for the Commercial Space, as defined in the Loan Agreement. The Permanent Employees Local Hiring Program shall include the following requirements:

##### **A. Local Hiring Program**

The Developer certifies and agrees that all Tenants shall implement a Local Hiring Program that shall include the following goals. These goals shall be included as a material term of any agreement between the Developer and any Tenant:

1. **Community Area and Local Resident Hiring Goal:** For each 6 month period, 50% of the work hours for each Tenant shall be performed by Community Area Residents.

To the extent that the preceding local hiring goal is not feasible, despite the Developer or Tenant's reasonable best efforts, the Tenant may fulfill the Community Area Resident Hiring Goal by filling the remaining hours with Local Residents.

Community Area Resident means an individual who is a resident of the City of Los Angeles and whose primary residence is within three miles of the Project Area's borders. The list of zip codes in which a Community Area Resident may live is included as an attachment to this exhibit.

Local Resident means an individual whose primary place of residence is within the City and is within a zip code containing at least part of one census tract with a rate of unemployment in excess of 150% of the Los Angeles County unemployment rate, as reported by the State of California Employment Development Department. The list of zip codes in which a Local Resident may live is included as an attachment to this exhibit.

2. **Local Low-Income Resident Hiring Goal:** For each 6 month period, 10% of the work hours for each Tenant shall be performed by Local Low-Income Residents. The Local Low-Income Resident hours may count towards the 50% Community Area Resident and Local Resident Hiring goals.

Local Low-Income Resident means an individual whose primary place of residence is within the City of Los Angeles and who, at the time of commencing work on a project under a Local Hiring Program either (a) has a household income of less than 50% of the Area Median Income (AMI), as defined by the State of California Housing and Community Development Department (HCD) or (b) faces at least one of the following barriers to employment: being homeless; being a custodial single parent; having a physical or mental disability; receiving public assistance; lacking a GED or high school diploma; having a criminal record or other involvement with the criminal justice system; or suffering from chronic unemployment. The status of a Local Low-Income Resident will be certified by the Qualified Recruitment Organization.

Qualified Recruitment Organization means an organization designated by the CRA/LA to assist in local hiring functions such as outreach, intake, screening, training, and/or referral. A list of Qualified Recruitment Organizations is attached to this exhibit.

The Tenant retains authority in making individual hiring decisions, and may use normal hiring practices, including interviews, to consider all referred applicants. The provisions of this Permanent Employees Local Hiring Policy do not require the Developer or Tenant to hire any person who does not have the experience and ability to qualify such person for such job.

#### **B. First Source Hiring Program.**

1. **Preferential Notification:** Each Tenant will notify a Qualified Recruitment Organization of job opportunities in advance of other hiring outreach efforts and provide a description of job responsibilities and qualifications, including expectations,

salary, work schedule, duration of employment, and any special requirements (e.g. language skills, drivers' licenses, etc.).

This preferential notification must be provided for a period of not less than a three (3) week period prior to commencement of the Tenant's operations. After commencement of a Tenant's operations, this preferential notification must be provided for at least a five (5) day period prior to the announcement of any job opportunity. Such preferential notification will take place throughout the Term of this Program.

2. **Initial Exclusive Hiring:** When making initial hires for the commencement of the Tenant's operations, the Tenant shall hire only Community Area, Local, or Local Low-Income Residents for a three (3) week period following the notification of job opportunities described in subparagraph B.1. above. After such period, Tenants shall make good-faith efforts to hire Community Area, Local, and Local Low-Income Residents but may hire any applicant recruited or referred through any source.
3. **Ongoing Exclusive Hiring:** When making hires after the commencement of operations, the Tenant will hire only Community Area, Local, or Local Low-Income Residents for a five (5) day period following the notification of job opportunities. After such period, Tenants shall make good-faith efforts to hire Community Area, Local, and Local Low-Income Residents but may hire any applicant recruited or referred through any source. The Tenant's obligations contained in this B.3. shall continue throughout the Term.
4. **Hiring Liaison:** Each Tenant will designate a Hiring Liaison before commencing operations covered by this Policy to act as a conduit between the Tenant and the Qualified Recruitment Organization. This Hiring Liaison will be responsible for providing to the Qualified Recruitment Organization, the Developer, and the CRA/LA all necessary documentation throughout the duration of the Project.

### **C. Living Wage Program**

Where appropriate, the CRA/LA's Living Wage Policy shall apply. Living Wage reports shall be submitted to the CRA/LA every six (6) months in a format approved by the CRA/LA.

### **D. Reporting.**

1. **Periodic Local Hiring Report:** Every six (6) months, a report shall be submitted to the designated staff person at the CRA/LA detailing the number of (i) Community Area Residents, (ii) Local Residents, (iii) Local Low-Income Residents, and (iv) all other City residents or non-residents that have been hired by each Tenant, the number and percentage of work hours that have been performed by each category of worker for that specific reporting period and since the inception of the project, and the total aggregate number and percentage of work hours performed by each category of worker. If requested by the CRA/LA, the Developer shall require any Tenant to provide copies of payroll records to verify the Local Hiring Report. All Local Hiring Reports should be sent to: Alexandra Paxton, Manager of Policy Analysis, CRA/LA, 354 S. Spring Street, Suite 700, Los Angeles, CA 90013.
2. The Developer and each Tenant shall make available to the CRA/LA or its authorized representative records and information requested that are relevant to

monitoring and enforcement of this Local Hiring Program. The Developer and each Tenant shall cooperate fully and promptly with any inquiry or investigation the CRA/LA deems necessary in order to monitor compliance with this Local Hiring Program, including allowing access to job sites and employees.

3. Upon request of any party to a Local Hiring Agreement, the CRA/LA Coordinator or authorized representative may administer the process of resolving alleged violations. This work may include scheduling and attending arbitration hearings, providing reports and other documents on alleged violations to the arbitrators who will hear the case, and doing other administrative tasks necessary to facilitate the quick and peaceful disposition of grievances.

#### **E. Demonstration of Compliance**

1. If the Developer has met or exceeded all Local Hiring Program goals, the Developer is in compliance.
2. If the Developer has not met or exceeded all Local Hiring Program targets but has satisfied each element of the list of activities below, the Developer is in compliance:
  - i Develop and submit CRA/LA-approved Local Hiring Plan;
  - ii Obtain Letters of Assent to the Local Hiring Program terms from each Tenant;
  - iii Work with the Recruitment Organization to encourage Tenant participation and to facilitate the success of the Permanent Employees Local Hiring Policy, by arranging meetings attended by the Developer, the Recruitment Organization, Tenants, and prospective Tenants;
  - iv Maintain detailed listings of job postings and contacts with Qualified Recruitment Organization;
  - v Maintain documentation of appropriate waiting period for requested referrals and any lack of responses;
  - vi Maintain documentation of reasons for not hiring referred candidates from target populations, if any; and
  - vii Submit accurate and timely Periodic Local Hiring and Living Wage reports.

Allow the CRA/LA monitor prompt and willing access to documentation of above activities.

## F. NON-COMPLIANCE

1. The Developer shall monitor and enforce the Local Hire Program requirements imposed on all of its contractors, including withholding payments to those contractors who violate these requirements.

Approval of  
Section D.2  
to be  
initialed by:

Developer:



CRA/LA:

\_\_\_\_\_

2. (a) In the event that the Developer is out of compliance and fails to monitor or enforce the requirements of this program against any contractor, the Developer shall be liable for the full amount of any liquidated damages, assessed at the average project wage for each hour that the project was short of the goal  
  
(b) The CRA/LA and the Developer agree that injury to the CRA/LA and the public caused by non-compliance to this Local Hire Program will be difficult or impossible to accurately estimate; and that the liquidated damages specified in this Section D.2 are a reasonable estimate of the probable loss.
3. The CRA/LA may withhold monies owed to the Developer, may impose liquidated damages on the Developer in the amounts specified herein, and/or may declare the Developer and or any of its contractors non-responsible and be debarred from further contracts for a period of two years in conformance with the CRA/LA's Policy on Contractor Responsibility.
4. In the event the Developer disputes either the determination of non-compliance, the calculation of liquidated damages, or a declaration of non-responsibility, the Developer may appeal to a panel appointed by the CRA/LA CEO, with final appeal to the CRA/LA Board of Commissioners.

The CRA/LA CEO shall have the authority to amend or modify provisions of this program as reasonably necessary to carry out the purpose of this Agreement and carry out the objectives of the parties.



# Plaza Pacoima Project Community Benefits Agreement

## Section I. Purpose

The purpose of the Community Benefits Agreement for the Project is to provide for a concerted and coordinated effort by the City, the CRA/LA, and Developer to maximize the benefits of the Project to the members of the surrounding community. It shall also serve to maximize community involvement in the planning, development, and use of area resources to ensure that local and low-income individuals residing in the surrounding community benefit from the Project. For these reasons, and in consideration of mutual promises, undertakings, and covenants, the adequacy of which the Coalition and Developer hereby acknowledge, the Coalition and Developer, on behalf of themselves and their respective successors, partners, and assigns, agree to the terms set forth in this Community Benefits Agreement.

## Section II. Definitions

As used in this Community Benefits Agreement, the following capitalized terms shall have the following meanings. All definitions include both the singular and the plural form.

“CRA/LA” shall mean the Community Redevelopment Agency of the City of Los Angeles.

“City” shall mean the City of Los Angeles.

“Coalition” shall mean the Pacoima Community Benefits Agreement Partners, as represented by Neighborhood Legal Services.

“Community Area Resident” is defined in the Policy.

“Developer” shall mean Plaza Pacoima LLC, a Delaware limited liability company.

“Disadvantaged Worker” is defined in the Policy.

“Jobs Coordinator” is defined in the Policy.

“Local Residents” is defined in the Policy.

“Owner Participation Agreement” shall mean that certain Owner Participation Agreement to be entered into by CRA/LA and Developer, dated as of June \_\_, 2008.

A. “Policy” shall mean the Full Local Hire Program, attached hereto as Attachment A.

“Project” shall mean the development of the Property as contemplated in the Owner Participation Agreement.

“Project Area” shall mean the Earthquake Disaster Assistance Project for Portions of Council District 7 Redevelopment Project Area.

“Property” shall mean the approximately 17.55 acre parcel of real property located at Paxton and Sutter Streets in the City of Los Angeles and more particularly described in the Owner Participation Agreement.

“Qualified Recruitment Organization” is defined in the Policy.

“Tenant” shall mean any entity that enters into a lease agreement or similar agreement for use of space within the Project.

### Section III. Full Local Hire Program

A. **Compliance with Policy.** Developer agrees to comply with the provisions of the Policy.

B. **Additional Responsibilities of the Jobs Coordinator.** In addition to the responsibilities of the Jobs Coordinator set forth in the Policy, Developer agrees to include as part of the Jobs Coordinator’s job responsibilities the following:

1. **Additional outreach for Construction Jobs.** The Jobs Coordinator shall provide services in support of the Developer’s local hire requirements for construction jobs (Section 1 of the Policy) as follows:

- No less than 30 days before construction begins, provide information about available job opportunities to the following listed referral sources (each a “Participating Referral Source”):
  - Chrysalis
  - Communities in Schools
  - Northeast San Fernando Valley Worksource Center
  - National Association for the Advancement of Colored People – San Fernando Valley Branch
- If such jobs require union membership, provide notice as soon as reasonably possible to the Participating Referral Sources listed above about the requirements and process for entry into approved apprenticeship programs
- Facilitate relationships among Participating Referral Sources and contractors on the project to enable prompt referrals

2. **Additional outreach for Permanent Jobs.** The Jobs Coordinator or Qualified Recruitment Organization, whichever is applicable, shall provide services in support of the Tenant's local hire requirements for permanent jobs (Section 2 of the Policy) as follows:

- Provide information about available job opportunities to the Participating Referral Sources as soon as such job opportunities become known to the Jobs Coordinator or Qualified Recruitment Organization and as early in the preferential notification period for the open job as possible
- Facilitate relationships among Participating Referral Sources and employers to enable prompt referrals

C. **Coalition Responsibilities.** Coalition Representatives will coordinate with employers and Participating Referral Sources to refer Community Area Residents, Local Residents and Disadvantaged Workers (collectively, "Qualified Employees") to the Jobs Coordinator or Qualified Recruitment Organization, whichever is applicable. Participating Referral Sources will use commercially reasonable efforts to refer Qualified Employees to the Jobs Coordinator or Qualified Recruitment Organization. If a Participating Referral Source fails to refer Qualified Employees to the Jobs Coordinator or Qualified Recruitment Organization, Developer, Jobs Coordinator or Qualified Recruitment Organization shall contact the Coalition and that Participating Referral Source in order to confirm that no such referrals were made. If a Participating Referral Source fails to provide any referrals on three (3) consecutive occasions at no time extending beyond five (5) business days, the Developer, its general contractor and any employers at the Project site shall have no further responsibility to contact that Participating Referral Source with regard to job opportunities.

## Section IV. Living Wage Policy

### A. **Developer Responsibilities Regarding Living Wages.**

1. **Compliance with Living Wage Ordinance.** Developer and its general contractor shall comply with the provisions of the City's Living Wage Ordinance, set forth in the Los Angeles Administrative Code, Section 10.37, to the extent such ordinance is applicable. Developer shall use commercially reasonable efforts to persuade Tenants to comply with the Living Wage Ordinance.

2. **Seventy-five Percent Living Wage Goal.** Developer shall use its commercially reasonable efforts to maximize the number of living wage jobs in the Project. Developer and the Coalition agree to a goal of maintaining at least 75 percent of the jobs in the Project as living wage jobs (the "Living Wage Goal"). Developer and the Coalition agree that this is a reasonable requirement in light of

all the circumstances. Achievement of the Living Wage Goal shall be measured each year on January 1, commencing on the first January 1 after the Project is operational, and shall be reported annually, as described below in Section IV.A.5. In the event that actual performance is less than 75 percent of the Living Wage Goal for two consecutive years, Developer shall promptly meet and confer with the Coalition to determine mutually agreeable steps which can and will be taken to meet the Living Wage Goal. Whether or not the Living Wage Goal is being met at each annual measurement, Developer shall be considered to be in compliance with this Section IV.A.2 if it is in compliance with Sections IV.A.5 and IV.A.6 below. Moreover, Developer's failure to meet the Living Wage Goal shall not be a breach or default under this Agreement or the Owners Participation Agreement.

3. **Exemption for Small Businesses.** Developer's responsibilities as set forth in Section IV.A.2 above shall not apply to jobs at businesses that occupy less than 5,000 square feet of space within the Project.

4. **Calculation of Proportion of Living Wage Jobs.** For purposes of determining the percentage of living wage jobs in the Project, the following jobs shall be considered living wage jobs:

- Jobs covered by the City's Living Wage Ordinance;
- Jobs for which the employee is paid on a salaried basis of at least \$19,673.60 per year if the employee is provided with employer-sponsored health-insurance, or \$22,796.80 per year otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance);
- Jobs for which the employee is paid at least \$9.71 per hour if the worker is provided with employer-sponsored health insurance, or \$10.96 per hour otherwise (these amounts will be adjusted in concert with cost-of-living adjustments to wages required under the City's Living Wage Ordinance); and
- Jobs covered by a Collective Bargaining Agreement.

The percentage of living wage jobs in the Project will be calculated as the number of on-site jobs falling into any of the above four categories, divided by the total number of on-site jobs. No part of this calculation shall take into account jobs covered by the exemption for small businesses, described in Section IV.A.3 above. The resulting number will be compared to the Living Wage Goal to determine whether the Living Wage Goal has been met.

5. **Reporting Requirements.** Developer will use commercially reasonable efforts to attempt to gather the information required and to provide an

annual report to the CRA/LA on the percentage of jobs in the Project that are living wage jobs. Such report will be in form and substance as reasonably acceptable to the CRA/LA. If the report indicates that the Living Wage Goal is not being met, Developer will include as part of the report an explanation as to why that is the case. In compiling this report, Developer shall be entitled to rely on information provided by Tenants and its general contractor, without responsibility to perform independent investigation. This report shall be filed for any given year or partial year by April 30<sup>th</sup> of the succeeding year.

Developer will provide copies of such annual report to the Coalition.

6. **Selection of Tenants.** Notwithstanding anything in this Agreement to the contrary, the provisions of this Section IV.A.6 shall not apply to Costco, Best Buy, any brand name bank, any Tenant occupying less than 5,000 square feet, or other party approved by CRA/LA as set forth in the Owner Participation Agreement. With respect to any other prospective Tenants, the following shall apply:

a. **Developer Notifies Coalition Before Selecting Tenants.** At least 45 days prior to executing any lease agreement or other contract for space within the Project, Developer shall notify the Coalition of the identity of the prospective Tenant, and shall, at the Coalition's request, meet with the Coalition regarding the prospective Tenant's impact, if any, on the Living Wage Goal. If exigent circumstances so require, notice may be given less than 45 days prior to signing such a lease agreement or other contract; however, in such cases Developer shall at the earliest possible date give the Coalition notice of the identity of the prospective Tenant and, at the Coalition's request, meet with such Tenant on the earliest possible date and shall in any event occur prior to the signing of the lease agreement or other contract for space within the Project.

b. **Coalition Meeting with Prospective Tenants.** At least 30 days before signing a lease agreement or other contract for space within the Project, Developer will arrange and attend a meeting between the Coalition and the prospective Tenant or Tenant's representative, if the Coalition so requests. At such a meeting, the Coalition and Developer will discuss with the prospective Tenant the Living Wage Goal and Developer will assist the Coalition in encouraging participation in this program. If exigent circumstances so require, such a meeting may occur less than 30 days prior to the signing of a lease agreement; however, in such cases the meeting shall be scheduled to occur on the earliest possible dates and shall in any event occur prior to the signing of the lease agreement or other contract for space.

c. **Consideration of Impact on Living Wage Goal.** When choosing between prospective Tenants for a particular space within the Project,

Developer will, within commercially reasonable limits, take into account as a substantial factor each prospective Tenant's impact on achievement of the Living Wage Goal.

d. **Tenants Agree to Reporting Requirements.** Tenants are not required to participate in the Living Wage program. However, all Tenants shall make annual reports as set forth in Section IV.B.1 below. Developer will use commercially reasonable efforts to include these reporting requirements as a material term of all lease agreements or other contracts for space within the Project.

#### **B. Tenants' Reporting Requirements.**

1. **Annual Report.** Developer shall use commercially reasonable efforts to have each Tenant report to Developer its number of on-site jobs, the percentage of these jobs that are living wage jobs, and the percentage of these jobs for which employees are provided with health insurance by the Tenant in form and substance as set forth in the Owner Participation Agreement. Tenants need not include precise salaries in such reports; rather, with regard to wages, Tenants need only include the number of jobs and the percentage of these jobs that are living wage jobs, as defined in Section IV.A.4 above. Such reports shall be filed for any given year or partial year by April 30 of the succeeding year and shall use January 1 as the date for determining the number of jobs and percentage that are living wage jobs.

2. **Term.** All provisions and requirements of this Section shall terminate and become ineffective for each Tenant five years from the date of that Tenant's first annual report submitted pursuant to Section IV.B.1 above.

### **Section V. Security**

A. **Security during construction of the Project.** Developer agrees that it will require that the site be secured during construction. Developer shall provide and maintain, or cause to be provided or maintained, a security management trailer on the Project site during the duration of construction and ensure that it is adequately staffed at all times to maintain the safety and security of the Project site during construction.

B. **Security during the post-construction operations of the Project.** Developer agrees that it will provide or request that Tenants provide adequate on-going private security for the Project site once the Project is constructed and open to the public. This security system shall include the following measures.

1. **On-Site Security Staffing.** Once the Project is constructed and open to the public, Developer shall use commercially reasonable efforts to

provide, or cause to be provided, on-site, unarmed security guards at all times during the Developer's regular business hours. Regular business hours shall be measured from the earliest time that any one of the Tenants is open until the latest time that any one of the Tenants closes. At all other times, Developer shall maintain or cause to be maintained, within commercially reasonable limits, an adequate private security system to ensure the safety and security of the Project site, including without limitation, the provision of security cameras throughout the Project site.

2. **Coordination with Lowe's Home Improvement.** Developer agrees that it shall use its commercially reasonable efforts to coordinate its security system and security policies and procedures with adjacent property owner, Lowe's Home Improvement, to ensure the adequate safety and security of the Project site.

3. **Coordination with the community.** Developer agrees that it shall establish and make available a security policy that includes a communication mechanism for community members to raise security-related concerns with the management of the Project. This policy shall include the designation of a contact person for security-related issues.

4. **No Security Bars or Fences.** Other than as specified on Exhibit B, Developer agrees to use commercially reasonable efforts to prohibit Tenants from placing security bars on the exterior portion of its windows, excluding operable roll down gates and security screens for non-business hours. In order to accomplish this, Developer agrees to use commercially reasonable efforts to include such a restriction as a material term of all lease agreements or other contracts for space within the Project.

## Section VI. Business Improvement District

Developer agrees that it shall support any reasonable attempt to develop a Business Improvement District in Pacoima that includes the Project within its boundaries. This means that Developer shall vote in favor of adoption of a commercially reasonable Business Improvement District, similar to those in like-kind communities, in any vote held for that purpose.

## Section VII. Cultural Arts Fund

A. **Establishment of a local cultural arts fund.** Prior to the construction of any buildings on Property and after CRA/LA funding has been received and building permits have been issued (excluding any demolition, grading and environmental remediation activities), Developer shall provide to CRA/LA \$300,000 to be deposited into a CRA Cultural Trust Fund for the benefit of the Pacoima Community. It is the intention of the Parties that (1) CRA/LA provide the Coalition with the proposed criteria for such Cultural Trust Fund to ensure that the intended goals of the Coalition cultural

arts projects are consistent with such proposed Cultural Trust Fund criteria, and (2) CRA/LA establish a process to receive Coalition input regarding the particular cultural arts project or projects to be funded. Notwithstanding the foregoing, Developer's obligations with respect to this Section VII.A. shall be met by payment of such \$300,000 to the CRA/LA, and Developer shall have no further obligations under this Section VII.A.

B. **Public art fund.** Developer shall comply with the CRA/LA's Art Policy and satisfy Owner's Public Art Policy Obligation as set forth in the Owner Participation Agreement.

## Section VIII. Environmental Mitigations

A. **Leadership in Energy and Environmental Design (LEED) Silver Level Certification.** Developer agrees that the Project will be designed and constructed with the intent to meet the certification criteria at the Silver level under the LEED Green Building Rating System established by the U.S. Green Building Council or consistent with a comparable certification process acceptable to the CRA/LA.

B. **Independent third party monitoring.** Developer agrees to retain an independent third party consultant to monitor the Project site and Project for environmental issues. Developer agrees to provide the contact information for such consultant to the CRA/LA so that the CRA/LA can raise questions related to environmental issues and remediation of the Project site directly with the consultant; provided, however, that Developer shall have approval rights over any work conducted by the consultant.

C. **On Site walking path.** Developer agrees to create or to ensure the creation of a lighted walking path from the parking lot to each Tenant that occupies more than 40,000 square feet on the Project site.

D. **No idling on Site or on adjacent roads.** Developer agrees to prohibit trucks that are serving the Project from idling on the Project and on the roads adjacent to the Project site, including Paxton Street, Bradley Avenue, Sutter Avenue, and Louvre Street. Developer shall post no idling zone signs throughout the Project site and along the perimeter of the Project site adjacent to the aforementioned public roads to prevent truck idling. Developer agrees to use commercially reasonable efforts to enforce these idling prohibitions and to direct idling trucks to turn off their engines promptly.

E. **Preference for low-emission contractors.** Developer agrees to give special consideration, during the process of selecting a general contractor for the construction of the Project, to those contractors who employ low emissions equipment and vehicles and who use particulate traps on their equipment and vehicles. Developer agrees to state this preference, provided it is commercially reasonable, in any document that it creates for the purpose of soliciting a bid from a general contractor for construction of the Developer.



**F. No heavy maintenance of construction equipment on Project site.**

Developer agrees to prohibit the heavy maintenance of construction equipment on the Project site. Heavy maintenance shall be defined to include any maintenance beyond the regular daily maintenance that would be necessary for the equipment to function in the normal course of construction. Developer agrees to use commercially reasonable efforts to include this prohibition as a condition in all of its contracts with all of the construction contractors and subcontractors who will be working on the Site.

**G. Mitigated Negative Declaration.** Notwithstanding the foregoing, to the extent the terms of this Section VIII. are inconsistent with the requirements set forth in Developer's entitlements and mitigations for the Project pursuant to the mitigated negative declaration for the Project, the terms set forth in the mitigated negative declaration shall control.

**Section IX. Prohibition on Check Cashing Businesses and Payday Lenders**

**A. Prohibition on Check Cashing Businesses and Payday Lenders.**

Developer agrees that no business which engages in check cashing or payday lending (also known as a deferred deposit transaction) as a primary activity shall become a Tenant at the Project. This prohibition shall include any business that offers, originates, or makes a deferred deposit transaction, who arranges a deferred deposit transaction for a deferred deposit originator, who acts as an agent for a deferred deposit originator, or who assists a deferred deposit originator in the origination of a deferred deposit transaction. This prohibition shall not preclude traditional banking institutions and/or credit unions that are insured by the FDIC from becoming a Tenant in the Project.

**B. Developer to Market Site to Traditional Banking Institutions and/or Credit Unions.** Developer agrees that it shall use commercially reasonable efforts to market space in the Project to traditional banking institutions and/or credit unions in an effort to attract such banks or credit unions to become a Tenant at the Project.

**Section X. Community Oversight Committee**

**A.** Upon execution of this Agreement, a Community Oversight Committee (the "Committee") will be formed and comprised of designated representatives from the CRA/LA and the Coalition. If requested by the Committee, Developer shall meet with the Committee on a quarterly basis. At such meetings, all parties will engage in a cooperative effort to develop strategies for successful implementation of the provisions of this Agreement. Upon request by the CRA/LA or the Committee, Developer shall provide to the requesting party access to Project site, during normal business hours, to enable the requesting party to monitor implementation of the Agreement. Developer shall provide sufficient information to the Committee to enable it to monitor implementation of all sections of this Agreement.

IN WITNESS WHEREOF, the parties hereto caused this Community Benefits Agreement to be duly executed by their respective officers.

Dated: \_\_\_\_\_

Plaza Pacoima LLC

By:

Dated: 7/1/08

Pacoima Community Benefits Agreement  
Partners

By:

*Josh Stehlik*  
Josh Stehlik

By:

*Leroy Gater*  
Leroy Gater

## FULL LOCAL HIRE PROGRAM

### Attachment "A"

#### Section 1: Construction Jobs Local Hire Program

##### Utilization of Project Area Residents: Construction Jobs Local Hire Program

One of the purposes of this Agreement and the assistance provided by CRA/LA is to provide employment opportunities for the local population.

The Developer agrees to implement and to require all its contractors to implement, for the duration of construction on the project, a Local Hire Program as defined below:

#### A. LOCAL HIRING REQUIREMENTS

##### 1. The following percentages shall be achieved for the project:

##### a. 30% of all construction work hours shall be performed by:

- i. **Community Area Residents**, which means individuals whose primary place of residence is within the City of Los Angeles and within three miles of the Project Area's border; or
- ii. **Local Residents**, which means individuals whose primary place of residence is within the City of Los Angeles and is within a zip code containing at least part of one census tract with a rate of unemployment in excess of 150% of the Los Angeles County unemployment rate, as reported by the State of California Employment Development Department.
- iii. Priority shall be given to Community Area Residents. The zip codes in which a Community Area Resident and Local Resident may live shall be provided by the Community Redevelopment Agency of the City of Los Angeles (CRA/LA).

##### b. 10% of all construction work hours shall be performed by **Disadvantaged Workers**. The Disadvantaged Worker hours may count towards the 30% Community Area and Local Resident requirement, and/or the 50% Community Area and Local Resident Apprentice requirement. A Disadvantaged Worker means an individual whose primary place of residence is within the City of Los Angeles, and who, prior to commencing work on the project either:

- i. Has a household income of less than 50% of the Area Median Income (AMI), or
- ii. Faces at least one of the following barriers to employment: being homeless; being a custodial single parent; receiving public assistance; lacking a GED or high school diploma; having a criminal record or other involvement with the criminal justice system; or suffering from chronic unemployment.

- c. **A minimum of 50% of all hours worked by construction Apprentices shall be performed by Community Area Residents and Local Residents.** Priority shall be given to Community Area Residents. An Apprentice means any worker indentured in a bona fide construction apprenticeship program registered and approved by the State of California, Division of Apprenticeship Standards.
2. The status of a Disadvantaged Worker shall be certified by a Jobs Coordinator, described in Section B. 5.
3. The construction employer retains authority in making individual hiring decisions.
4. Hours worked by permanent residents of states other than California do not count towards total work hours when calculating the Local Hire Requirements.

## **B. REQUIREMENTS**

1. **Local Hire Schedule.** The Developer shall develop a Local Hire Schedule that establishes the hiring process and approximate timetable to be followed by the Developer and all contractors for construction hiring to achieve the overall requirements of the Local Hire Program. The Local Hire Schedule shall provide the basis for the CRA/LA's monitoring of the project and for the Jobs Coordinator's preparation of local worker candidates. The Local Hire Schedule must be submitted to the CRA/LA Compliance Supervisor no less than thirty (30) days before construction begins, and shall be approved or disapproved by the CRA/LA Chief Executive Officer (CEO) or designee within two weeks of submittal by the Developer. The Developer shall not start construction without an approved Local Hire Schedule.
2. **Local Hire Orientation.** Before construction begins, the Developer shall contact the CRA/LA to schedule a Local Hire Orientation with its contractors. The purpose of this orientation is to help all contractors on the project understand the Local Hire Program, Local Hire Requirements, reporting requirements, role of the Jobs Coordinator, and answer questions. The Local Hire Orientation may take place concurrently with the pre-construction meeting, if applicable. To arrange for the Local Hire Orientation, the Developer shall contact: Jim Larkin, Compliance Supervisor, CRA/LA, 354 S. Spring Street, Suite 600, Los Angeles, CA 90013, (213) 977-1600 or [jlarkin@cra.lacity.org](mailto:jlarkin@cra.lacity.org).
3. **Maximizing Apprentices.** The Developer's contractors shall use the maximum number of Apprentices allowed by law.
4. **Coordination with unions (if applicable).** The Developer's contractors that have an agreement with a construction union shall use the following procedures and shall inform each relevant union of these requirements:
  - a. The Developer's contractors shall give priority to Local Residents, Community Residents, and Disadvantaged Workers and shall promptly notify the CRA/LA Compliance Supervisor of any union that fails or refuses to refer Local Residents, Community Residents, and Disadvantaged Workers for jobs on projects receiving CRA/LA financial assistance.
  - b. The Developer's contractors shall sponsor any qualified entry-level Disadvantaged Worker as a first period apprentice and shall indicate this by

sending a letter or form, as appropriate, to the relevant union or apprenticeship program expressing a commitment to sponsor the Disadvantaged Worker in question (e.g. hiring the individual to enable his/her entry into an apprenticeship program).

- c. The Developer's contractors shall use a Craft Request Form provided by the CRA/LA, a document through which contractors shall request workers from unions. The Developer's contractors shall send copies of all Craft Request Forms to the Jobs Coordinator at the same time as they are submitted to the unions. All copies of all Craft Request Forms submitted and/or received, including transmission verification documents that are date/time imprinted or a log of related faxes sent and received regarding Local Hire Requirements shall be maintained and submitted to the CRA/LA when requested.

**5. Jobs Coordinator.** The Developer shall hire a Jobs Coordinator from the CRA/LA list of pre-qualified firms in order to meet the requirements of the Local Hire Program. A Jobs Coordinator means an independent third-party entity with whom the Developer's contractors work to facilitate implementation of the Local Hire Requirements. Notwithstanding the availability of the Jobs Coordinator to assist, the Developer is solely responsible for achieving the Local Hire Requirements.

- a. Each of the Developer's contractors shall use a Craft Request Form provided by the CRA/LA, a document through which contractors shall request workers from the Jobs Coordinator.
- b. The Jobs Coordinator shall provide services in support of the Developer's Local Hire Requirements including:
  - i. establish a point of contact to provide information about available job opportunities;
  - ii. certify the status of Disadvantaged Workers;
  - iii. reach out to targeted populations;
  - iv. conduct or coordinate programs to prepare interested residents to enter construction jobs;
  - v. develop and maintain an up-to-date list of qualified City residents;
  - vi. facilitate relationships among approved apprenticeship programs and contractors to enable prompt referrals;
  - vii. educate contractors regarding tax deductions, tax credits and other benefits for which they may be eligible based on their implementation of the Local Hire Requirements; and
  - viii. assist contractors with reporting by working with contractors and the CRA/LA or authorized representative where appropriate.

**6. Local Hire Report.** The Developer shall report quarterly to the CRA/LA on the progress of the Local Hire Program in a format to be determined by the CRA/LA. The report shall detail the number of (i) Community Area Residents, (ii) Local Residents, (iii) Disadvantaged Workers, (iv) Community Area and Local Resident Apprentices, (v) total Apprentices, and (vi) all other City residents and/or non-residents that have been hired by all contractors; the number and percentage of work hours that have been performed by each category of worker for that specific reporting period; and in aggregate since the inception of the project. If requested by the CRA/LA, the Developer shall require any contractor to provide copies of payroll records to verify the Local Hire Report. All Local

Hire Reports, the Local Hire Schedule, and payroll records shall be sent to: Jim Larkin, Compliance Supervisor, CRA/LA, 354 S. Spring Street, Suite 600, Los Angeles, CA 90013 or [jlarkin@cra.lacity.org](mailto:jlarkin@cra.lacity.org).

### **C. DEMONSTRATION OF COMPLIANCE**

1. If the Developer has met or exceeded all Local Hire Program targets, the Developer is in compliance.
2. If the Developer has not met or exceeded all Local Hire Program targets but has satisfied each element of the list of activities below, the Developer or contractor is in compliance:
  - 1) Develop and submit a CRA/LA-approved Local Hire Schedule 30-days prior to construction start;
  - 2) Convene a pre-bid meeting, if applicable, and a Local Hire Orientation prior to construction start;
  - 3) Ensure that all contractors contractually agree to comply with terms of Local Hire Program and obtain letters of assent from each contractor;
  - 4) Hire a Jobs Coordinator from the CRA/LA's pre-qualified list of firms; regularly contact and document contact with a Jobs Coordinator;
  - 5) Use and document use of CRA/LA-approved Craft Request Forms sent to construction unions, if applicable, and Jobs Coordinator;
  - 6) Document waiting period for requested referrals and any lack of responses from unions, if applicable, and Jobs Coordinator;
  - 7) Document reasons for not hiring referred candidates from target populations, if applicable;
  - 8) Submit quarterly Local Hire Reports in a timely manner; and
  - 9) Allow CRA/LA monitor prompt and willing access to documentation of above activities.

#### D. NON-COMPLIANCE

1. The Developer shall monitor and enforce the Local Hire Program requirements imposed on all of its contractors, including withholding payments to those contractors who violate these requirements.

Approval of  
Section D.2  
to be  
initialed by:

Developer:

CRA/LA:

2. (a) In the event that the Developer is out of compliance and fails to monitor or enforce the requirements of this program against any contractor, the Developer shall be liable for the full amount of any liquidated damages, assessed at the average project wage for each hour that the project was short of the goal

(b) The CRA/LA and the Developer agree that injury to the CRA/LA and the public caused by non-compliance to this Local Hire Program will be difficult or impossible to accurately estimate; and that the liquidated damages specified in this Section D.2 are a reasonable estimate of the probable loss.

3. The CRA/LA may withhold monies owed to the Developer, may impose liquidated damages on the Developer in the amounts specified herein, and/or may declare the Developer and or any of its contractors non-responsible and be debarred from further contracts for a period of two years in conformance with the CRA/LA's Policy on Contractor Responsibility.
4. In the event the Developer disputes either the determination of non-compliance, the calculation of liquidated damages, or a declaration of non-responsibility, the Developer may appeal to a panel appointed by the CRA/LA CEO, with final appeal to the CRA/LA Board of Commissioners.

- E. The CRA/LA CEO shall have the authority to amend or modify provisions of this program as reasonably necessary to carry out the purpose of this Agreement and carry out the objectives of the parties.

#### Section 2: Permanent Jobs Local Hire Program

##### Utilization of Project Area Residents: Permanent Employees Local Hiring Program

For the purposes of this Program, all capitalized terms shall have the meanings specified in the Owner Participation Agreement ("Agreement").

The Developer agrees that all Tenants shall implement a Permanent Employees Local Hiring Program ("Program"). The Term of the Program shall be the ten (10) year period commencing on the date that the first certificate of occupancy is issued by the City of Los Angeles for the Commercial Space, as defined in the Loan Agreement. The Permanent Employees Local Hiring Program shall include the following requirements:

##### **A. Local Hiring Program**

The Developer certifies and agrees that all Tenants shall implement a Local Hiring Program that shall include the following goals. These goals shall be included as a material term of any agreement between the Developer and any Tenant:

1. **Community Area and Local Resident Hiring Goal:** For each 6 month period, 50% of the work hours for each Tenant shall be performed by Community Area Residents.

To the extent that the preceding local hiring goal is not feasible, despite the Developer or Tenant's reasonable best efforts, the Tenant may fulfill the Community Area Resident Hiring Goal by filling the remaining hours with Local Residents.

Community Area Resident means an individual who is a resident of the City of Los Angeles and whose primary residence is within three miles of the Project Area's borders. The list of zip codes in which a Community Area Resident may live is included as an attachment to this exhibit.

Local Resident means an individual whose primary place of residence is within the City and is within a zip code containing at least part of one census tract with a rate of unemployment in excess of 150% of the Los Angeles County unemployment rate, as reported by the State of California Employment Development Department. The list of zip codes in which a Local Resident may live is included as an attachment to this exhibit.

2. **Local Low-Income Resident Hiring Goal:** For each 6 month period, 10% of the work hours for each Tenant shall be performed by Local Low-Income Residents. The Local Low-Income Resident hours may count towards the 50% Community Area Resident and Local Resident Hiring goals.

Local Low-Income Resident means an individual whose primary place of residence is within the City of Los Angeles and who, at the time of commencing work on a project under a Local Hiring Program either (a) has a household income of less than 50% of the Area Median Income (AMI), as defined by the State of California Housing and Community Development Department (HCD) or (b) faces at least one of the following barriers to employment: being homeless; being a custodial single parent; having a physical or mental disability; receiving public assistance; lacking a GED or high school diploma; having a criminal record or other involvement with the criminal justice system; or suffering from chronic unemployment. The status of a Local Low-Income Resident will be certified by the Qualified Recruitment Organization.

Qualified Recruitment Organization means an organization designated by the CRA/LA to assist in local hiring functions such as outreach, intake, screening, training, and/or referral. A list of Qualified Recruitment Organizations is attached to this exhibit.

The Tenant retains authority in making individual hiring decisions, and may use normal hiring practices, including interviews, to consider all referred applicants. The provisions of this Permanent Employees Local Hiring Policy do not require the Developer or Tenant to hire any person who does not have the experience and ability to qualify such person for such job.

#### **B. First Source Hiring Program.**

1. **Preferential Notification:** Each Tenant will notify a Qualified Recruitment Organization of job opportunities in advance of other hiring outreach efforts and provide a description of job responsibilities and qualifications, including expectations,



salary, work schedule, duration of employment, and any special requirements (e.g. language skills, drivers' licenses, etc.).

This preferential notification must be provided for a period of not less than a three (3) week period prior to commencement of the Tenant's operations. After commencement of a Tenant's operations, this preferential notification must be provided for at least a five (5) day period prior to the announcement of any job opportunity. Such preferential notification will take place throughout the Term of this Program.

2. **Initial Exclusive Hiring:** When making initial hires for the commencement of the Tenant's operations, the Tenant shall hire only Community Area, Local, or Local Low-Income Residents for a three (3) week period following the notification of job opportunities described in subparagraph B.1. above. After such period, Tenants shall make good-faith efforts to hire Community Area, Local, and Local Low-Income Residents but may hire any applicant recruited or referred through any source.
3. **Ongoing Exclusive Hiring:** When making hires after the commencement of operations, the Tenant will hire only Community Area, Local, or Local Low-Income Residents for a five (5) day period following the notification of job opportunities. After such period, Tenants shall make good-faith efforts to hire Community Area, Local, and Local Low-Income Residents but may hire any applicant recruited or referred through any source. The Tenant's obligations contained in this B.3. shall continue throughout the Term.
4. **Hiring Liaison:** Each Tenant will designate a Hiring Liaison before commencing operations covered by this Policy to act as a conduit between the Tenant and the Qualified Recruitment Organization. This Hiring Liaison will be responsible for providing to the Qualified Recruitment Organization, the Developer, and the CRA/LA all necessary documentation throughout the duration of the Project.

### **C. Living Wage Program**

Where appropriate, the CRA/LA's Living Wage Policy shall apply. Living Wage reports shall be submitted to the CRA/LA every six (6) months in a format approved by the CRA/LA.

### **D. Reporting.**

1. **Periodic Local Hiring Report:** Every six (6) months, a report shall be submitted to the designated staff person at the CRA/LA detailing the number of (i) Community Area Residents, (ii) Local Residents, (iii) Local Low-Income Residents, and (iv) all other City residents or non-residents that have been hired by each Tenant, the number and percentage of work hours that have been performed by each category of worker for that specific reporting period and since the inception of the project, and the total aggregate number and percentage of work hours performed by each category of worker. If requested by the CRA/LA, the Developer shall require any Tenant to provide copies of payroll records to verify the Local Hiring Report. All Local Hiring Reports should be sent to: Alexandra Paxton, Manager of Policy Analysis, CRA/LA, 354 S. Spring Street, Suite 700, Los Angeles, CA 90013.
2. The Developer and each Tenant shall make available to the CRA/LA or its authorized representative records and information requested that are relevant to

monitoring and enforcement of this Local Hiring Program. The Developer and each Tenant shall cooperate fully and promptly with any inquiry or investigation the CRA/LA deems necessary in order to monitor compliance with this Local Hiring Program, including allowing access to job sites and employees.

3. Upon request of any party to a Local Hiring Agreement, the CRA/LA Coordinator or authorized representative may administer the process of resolving alleged violations. This work may include scheduling and attending arbitration hearings, providing reports and other documents on alleged violations to the arbitrators who will hear the case, and doing other administrative tasks necessary to facilitate the quick and peaceful disposition of grievances.

#### **E. Demonstration of Compliance**

1. If the Developer has met or exceeded all Local Hiring Program goals, the Developer is in compliance.
2. If the Developer has not met or exceeded all Local Hiring Program targets but has satisfied each element of the list of activities below, the Developer is in compliance:
  - i Develop and submit CRA/LA-approved Local Hiring Plan;
  - ii Obtain Letters of Assent to the Local Hiring Program terms from each Tenant;
  - iii Work with the Recruitment Organization to encourage Tenant participation and to facilitate the success of the Permanent Employees Local Hiring Policy, by arranging meetings attended by the Developer, the Recruitment Organization, Tenants, and prospective Tenants;
  - iv Maintain detailed listings of job postings and contacts with Qualified Recruitment Organization;
  - v Maintain documentation of appropriate waiting period for requested referrals and any lack of responses;
  - vi Maintain documentation of reasons for not hiring referred candidates from target populations, if any; and
  - vii Submit accurate and timely Periodic Local Hiring and Living Wage reports.

Allow the CRA/LA monitor prompt and willing access to documentation of above activities.

## F. NON-COMPLIANCE

1. The Developer shall monitor and enforce the Local Hire Program requirements imposed on all of its contractors, including withholding payments to those contractors who violate these requirements.

Approval of  
Section D.2  
to be  
initialed by:

Developer:



CRA/LA:

\_\_\_\_\_

2. (a) In the event that the Developer is out of compliance and fails to monitor or enforce the requirements of this program against any contractor, the Developer shall be liable for the full amount of any liquidated damages, assessed at the average project wage for each hour that the project was short of the goal  
  
(b) The CRA/LA and the Developer agree that injury to the CRA/LA and the public caused by non-compliance to this Local Hire Program will be difficult or impossible to accurately estimate; and that the liquidated damages specified in this Section D.2 are a reasonable estimate of the probable loss.
3. The CRA/LA may withhold monies owed to the Developer, may impose liquidated damages on the Developer in the amounts specified herein, and/or may declare the Developer and or any of its contractors non-responsible and be debarred from further contracts for a period of two years in conformance with the CRA/LA's Policy on Contractor Responsibility.
4. In the event the Developer disputes either the determination of non-compliance, the calculation of liquidated damages, or a declaration of non-responsibility, the Developer may appeal to a panel appointed by the CRA/LA CEO, with final appeal to the CRA/LA Board of Commissioners.

The CRA/LA CEO shall have the authority to amend or modify provisions of this program as reasonably necessary to carry out the purpose of this Agreement and carry out the objectives of the parties.

## Appendix F: Sample Public Records Requests



Los Angeles (Headquarters)  
3701 Wilshire Blvd., Suite 208  
Los Angeles, CA 90010  
T. 213.487.7211  
F. 213.487.0242

Sacramento  
1107 9<sup>th</sup> Street, Suite 700  
Sacramento, CA 95814  
T. 916.442.0753  
F. 916.442.7966

July 18, 2016

**VIA FACSIMILE AND ELECTRONIC MAIL**

Yvonne Spence, City Clerk  
2600 Fresno Street  
Room 2133  
Fresno, California 93721  
Fax: (559) 488-1005  
Email: [clerk@fresno.gov](mailto:clerk@fresno.gov)

**Re: Public Records Act Request City of Fresno**

Dear Ms. Spence:

I am writing on behalf of Tenants Together to request public records pursuant to the California Public Records Act. Govt. Code §6250 *et seq.* A public record "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic." Govt. Code. §6252(e). Writing means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, photographic films and prints, discs, drums and other documents. Govt. Code §6252(f).

We request an opportunity to inspect copies, including but not limited to electronic copies of any records maintained in electronic format, of the following public records:

- 1) All materials, including but not limited to, drafts, studies, budget reports, policies, correspondences, and memorandums used in developing and amending the Fresno Management of Real Property Ordinance, Article 7, Chapter 10.
- 2) All complaints made to the Code Enforcement Division from January 1, 2014 through the present.
- 3) All materials, including but not limited to, policies and memos, explaining how the Management of Real Property Ordinance, Article 7, Chapter 10, Sections 10-701-10-716, is to be enforced.
- 4) All notices to property owners, as described in the Fresno Municipal Code Section 10-709, from January 1, 2014 through the present.
- 5) All administrative citations, as described in the Fresno Municipal Code Section 10-710, issued to landlords or tenants, from January 1, 2014 through the present.

Yvonne Spence

July 18, 2016

Page 2

- 6) All appeals filed by landlords or tenants to an administrative citation issued for violating Fresno Municipal Code Section 10-708, from January 1, 2014 through the present.

Prior to copying the documents, we would like to review them after they are compiled to avoid duplication and identify those documents we wish to have copied.

As you may know, Tenants Together is a non-profit corporation with limited resources. Tenants Together is dedicated to defending and advancing the rights of California tenants to safe, decent and affordable housing. Accordingly, we request that you waive any costs associated with this Public Records Act request and/or permit Tenants Together to arrange for copying of relevant documents in order to reduce the cost of this request.

Thank you for your consideration. If you have any questions, please contact me at 213-235-2634 or [mpalomares@wclp.org](mailto:mpalomares@wclp.org).

Sincerely,

A handwritten signature in black ink that reads "Maria Palomares". The signature is written in a cursive, flowing style.

Maria Palomares

January 9, 2006

U.S. Department of Housing & Urban Development  
Region 9, Community Planning and Development  
600 Harrison Street, Third Floor  
San Francisco, CA 94107

Re: Freedom of Information Act Request

Dear Community Planning and Development:

Pursuant to the Freedom of Information Act (5 USC 552 et seq.), we request the opportunity to inspect and/or copy public records related to the County of Solano's receipt of federal funds (including but not limited to McKinney-Vento Homeless Assistance Act funds), and the implementation of programs, for the homeless population in the County. We request inspection of the following documents:

1. Any and all documents related to the County of Solano's Continuum of Care for FY 2005;
2. Any and all documents related to the County of Solano's Continuum of Care for FY 2004;
3. Any and all documents related to the County of Solano's Continuum of Care for FY 2003;
4. Any and all documents related to the County of Solano's Continuum of Care for FY 2002;
5. Any and all documents related to the County of Solano's Continuum of Care for FY 2001.
6. Any and all financial and performance information reports for FY 2005 related to the County of Solano's Continuum of Care, including but not limited to any IDIS report(s) and any written request and/or response for technical assistance.
7. Any and all financial and performance information reports for FY 2004 related to the County of Solano's Continuum of Care, including but not limited to any IDIS report(s) and any written request and/or response for technical assistance.

8. Any and all financial and performance information reports for FY 2003 related to the County of Solano's Continuum of Care, including but not limited to any IDIS report(s) and any written request and/or response for technical assistance.
9. Any and all financial and performance information reports for FY 2002 related to the County of Solano's Continuum of Care, including but not limited to any IDIS report(s) and any written request and/or response for technical assistance.
10. Any and all financial and performance information reports for FY 2001 related to the County of Solano's Continuum of Care, including but not limited to any IDIS report(s) and any written request and/or response for technical assistance.

As used herein, the term "document" includes any writing containing information related to the above, including but not limited to hand and typed writings, photocopies, emails and every other means of recording upon any form of communication or representation.

Pursuant to 24 C.F.R. §15.110, Western Center on Law and Poverty is an "other requester". We are a non-profit legal services provider which provides free civil legal services and community education to the lower income community, many of whom federal funds and programs for the homeless are principally intended to benefit. For this reason, we request, pursuant to 24 C.F.R. §15.110(h), that HUD reduce or waive any fees in connection with this request. Of course, in order to avoid any duplication or unnecessary expense, we request inspection of the documents prior to having any of the documents copied.

Thank you very much for your cooperation. I can be contacted by telephone at (510) 891-9794 ext. 125 or by email [slmartinez@wclp.org](mailto:slmartinez@wclp.org).

Very truly yours,

S. Lynn Martinez  
Attorney at Law





# LEGAL AID SOCIETY OF ORANGE COUNTY

2101 North Tustin Avenue, Santa Ana, California 92705  
(714) 571-5200 • FAX (714) 571-5270

December 12, 2013

VIA FEDERAL EXPRESS AND EMAIL

Housing Policy Development  
Department of Housing and Community Development  
2020 West El Camino Avenue  
Sacramento, CA 95833

RE: Public Records Act Request, City of Fullerton Housing Element Update

Dear Members of the Division of Housing Policy Development:

Pursuant to the California Public Records Act (Government Code section 6250 *et seq.*), we request to obtain copies of the following public records regarding the City of Fullerton's 2013 housing element update held by your agency:

- 1) All correspondence regarding Fullerton's housing element update for the 2013-2021 planning period.
- 2) All drafts, proposed drafts, revisions, proposed revisions, and any other draft, proposed or final versions of Fullerton's housing element update for the 2013-2021 planning period.
- 3) All other records, comments, templates, memoranda, inter-office correspondence, e-mails, or any other records that refer or relate to Fullerton's housing element update for the 2013-2021 planning period.
- 4) All future revisions and official correspondence that refers or relates to Fullerton's housing element update for the 2013-2021 planning period, until such time as the housing element update review is completed.

Although this letter is formulated as a formal Public Records Act request,<sup>1</sup> we want to work with you to ensure that we get the requested information without overburdening you. Please send the materials responsive to this request as they become available. Please send them in electronic format as provided by Government Code section 6253.9 whenever possible. To the extent any of the information we are requesting is readily available in other formats, however, or you anticipate having difficulty in compiling the requested information, please contact the undersigned, by telephone at (714) 571-5261 or via email at [hturney@legal-aid.com](mailto:hturney@legal-aid.com) to discuss this request.

Legal Aid Society of Orange County is a non-profit corporation with limited resources. We represent lower income residents of Orange County and provide our services free of charge. Accordingly, we request that you waive any costs associated with this Public Records Act request.

Thank you very much for your assistance and anticipated cooperation in this process. Please contact me by telephone at (714) 571-5261 or via email at [hturney@legal-aid.com](mailto:hturney@legal-aid.com) if you have any questions regarding this request.

Sincerely,



Holly Edwards

Directing Attorney

Legal Aid Society of Orange County

Direct: (714) 571-5261

[hturney@legal-aid.com](mailto:hturney@legal-aid.com)

---

<sup>1</sup> A public record includes any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by an state or local agency regardless of physical form or characteristics, (Govt. Code §6252(e)). Writing means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Govt. Code §6252(g)). This request also covers electronic documents, such as reports, spreadsheets, e-mails and other documents not necessarily in paper form.

## Appendix G: Sample Public Comment Letter on Housing Element



Los Angeles (Headquarters)  
3701 Wilshire Blvd., Suite 208  
Los Angeles, CA 90010  
T. 213.487.7211  
F. 213.487.0242

Sacramento  
1107 9<sup>th</sup> Street, Suite 700  
Sacramento, CA 95814  
T. 916.442.0753  
F. 916.442.7966

September 6, 2013

Lindy Suggs, Analyst  
Department of Housing and Community Development  
Division of Housing Policy Development  
1800 Third Street  
Sacramento, CA 95811-6942

*Via email to [lsuggs@hcd.ca.gov](mailto:lsuggs@hcd.ca.gov) and U.S. Mail*

Re: The City of Fullerton Draft Housing Element – Public Comment

Dear Ms. Suggs:

The matter of the City of Fullerton's compliance with SB 2 in planning for shelters within the City recently came to our attention. Western Center represents low-income Californians including Orange County and Fullerton residents, to advance their rights to housing and shelter. This letter and attached memorandum are offered as comments on the City of Fullerton's draft housing element update (DHE) submitted to HCD on July 12, 2013 and currently in review. We apologize that it was not possible to provide comments to your office earlier. Nevertheless, because we have concluded the concerns are serious, request that HCD give the comments herein your consideration.

We focus our comments on the deficiencies of the DHE with regard to compliance with Senate Bill 2, effective in 2008 and codified as California Government Code Section 65583 et seq.<sup>1</sup> Specifically, the DHE in violation of SB 2 and sections 65583(a)(4), (a)(5), (a)(7), and (c) – (1) relies on insufficient data to find an over 300% drop in the needs for emergency shelter from 2010 to 2013, (2) fails to analyze the governmental constraints imposed by its zoning for emergency shelters, and (3) fails to include appropriate programs to remove these constraints and ensure adequate zoning for emergency shelters by right in compliance with SB 2. Although Fullerton's draft asserts in general terms that the City completed the zoning required by their current housing element and SB 2, the available sites are not shown to be sufficient, and the development standards are too restrictive to comply with state law. Unfortunately, some Fullerton residents' lack of good faith toward the City's homeless residents may be reflected in the

<sup>1</sup> Unless otherwise stated, all statutory sections refer to the California Government Code.

City's concurrent decision to reject the unanimous recommendation of its Planning Commission by refusing a joint agreement with the County for a needed year-round multi-service homeless shelter.

To ensure substantial compliance with state law and SB 2, the DHE should be revised:

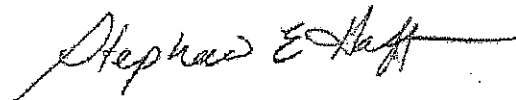
- (1) adequately and credibly assess the year-round needs of its homeless residents,
- (2) analyze the constraints imposed by its zoning requirements for emergency shelters, and
- (3) include a program to, within one year, establish true "by right" zoning with sufficient capacity to meet the needs for emergency shelters as required by section 65583(a)(4)(A).

The legislature, in enacting SB2, found that there is a "need for every city and county to plan for the location of adequate emergency shelters," and "in order to ensure access to services in every city and county for homeless individuals it is important that cities and counties plan for these services to address the special needs and circumstances of this threatened population," and "[i]t is the responsibility of cities and counties to plan and identify areas for emergency shelters." Senate Bill No.2, Chapter 633 (filed October 13, 2007), Section 1.

As authorized by section 65585, we urge HCD to find that Fullerton's draft is not in substantial compliance with state housing element law due to its failure to assess the needs, ensure access to services, and adequately plan for emergency shelters for its homeless residents in accordance with SB 2. Our concerns are set forth in greater detail in the attached memorandum.

If you have any questions, or if I can provide further information, please contact me at (213) 235-2617 or [shaffner@wclp.org](mailto:shaffner@wclp.org).

Sincerely,



Stephanie E. Haffner  
Attorney at Law

cc. Fullerton City Attorney  
Fullerton City Council  
Legal Aid Society of Orange County

Enc. Memorandum of Concerns  
Ex. A. Ordinance 3189 (adopted May 21, 2013)

**Memorandum of Concerns with  
Fullerton Draft Housing Element (DHE) (version submitted July 12, 2013)**

**1. The Draft does not adequately quantify the total need for shelter services over the planning period**

By relying on insufficient data, the DHE's estimated homeless population dropped by over 300% from 2010 to 2013, from 1,113 persons in 2010 to just 319 today. Fullerton's draft update offers no explanation for this dramatic decline.

The DHE must analyze the special needs of persons in need of emergency shelter, which "shall be assessed based on *annual and seasonal need*." Cal. Govt. Code §65583(a)(7)<sup>1</sup> (emphasis added). As HCD's Senate Bill 2 guidance memorandum points out, "Resources to indentify and analyze homeless needs, include consolidated plans, continuum of care plans, 10 Year Plans to End Chronic Homelessness, [and] local service providers" such as homeless shelters, food programs, mental health departments, churches and schools, among others. Memorandum from Cathy E. Creswell to Planning Directors and Interested Parties, re Senate Bill 2 (updated April 10, 2013) ("SB 2 Guidance Memo") at 7.

The City of Fullerton Housing Element adopted March 2, 2010 for the 2006-2014 planning period states that "there are an estimated 1,113 persons in need of shelter in Fullerton on an annual basis." City of Fullerton, General Plan Housing Element ("2010 HE") at 2-38. Its count was based on the 2007 Point-in-Time County estimate of 27,732 incidents of homelessness over a 12-month period, conversations with homeless service providers, and 871 unduplicated clients at the National Guard Amory cold-weather shelter within the year. *Id.* Based on the annual need and the number of beds available in Fullerton (240), the 2010 Housing Element stated a "remaining need for approximately 873 shelter beds." *Id.* at 3-17.

The DHE, on the other hand, asserts that "319 persons is assumed to be a reasonable estimate of the total homeless population in Fullerton." This dramatically lower estimate is based upon the January 2011 Point-in-Time survey estimating 6,939 homeless persons *at the time of the survey*, without regard to *year-round need*. DHE at 2-51. The only other source relied on is "a recent Police Department estimate of 300 homeless persons in Fullerton." *Id.* Other than the Fullerton police, no other community source is cited to assess the need. *Id.* The DHE goes on to state that there are one emergency shelter and three transitional shelters located in Fullerton, providing a total of 240 beds. DHE at 2-52. The DHE deletes the 2010 housing element detailed description

---

<sup>1</sup> Statute sections refer to the California Government Code unless otherwise noted.

of the 240 beds, including the fact that the largest – the Armory – is only a cold-weather shelter. DHE at 3-14 to 3-17. And, the DHE fails to assess the relationship between available beds and *year round* need.

Fullerton is aware that it has other available sources of information to assess year round need. It did not consult with homeless service providers consulted for the 2010 housing element. Moreover, in addition to the sources recommended in the HCD SB 2 guidance memo, we are informed that several commissions were engaged after the fatal police beating of Kelly Thomas, a homeless man, including the Fullerton Task Force on Homelessness and Mental Health Services and the North County Roundtable on Homelessness.<sup>2</sup>

The DHE thus fails to comply with section 65583(a)(7)'s mandate to assess the annual and seasonal need for emergency shelter within the City. The DHE should be found out of compliance until the need is adequately addressed.

**2. The DHE's analysis of governmental constraints fails to address Fullerton's failure to accomplish zoning for emergency shelters that complies with SB 2.**

The DHE must include an "analysis of potential and actual governmental constraints" on the development of emergency shelters, and demonstrate local efforts to remove those constraints to meeting the need for emergency shelters. §65583(a)(5). Moreover, unless they can demonstrate that current shelters can accommodate the jurisdiction's need, state law requires municipalities to identify at least one zone to permit emergency shelters without a conditional use permit or other discretionary action. §§65583(a)(4)(A), (a)(4)(C). In such "by right" zones, emergency shelters can only be subject to development standards that apply to residential or commercial within the same zone. §65583(a)(4)(A).

The DHE, however, fails to comply with State Housing Law because it does not analyze the governmental constraints imposed by changes to its municipal code adopted May 21, 2013 through Ordinance 3189 (attached here as Exhibit A). DHE at 3-14 to 3-17. As set forth below, Ordinance 3189 imposes criteria in its "by right" zone that violate the standards for such zones by imposing impermissible "location criteria" and requiring

<sup>2</sup> Although the City disapproved it, the staff report recommending that Fullerton participate in a year-round homeless shelter and multi-service shelter references as sources of information the Fullerton Task force on Homelessness and Mental Health Services, the North County Roundtable on Homelessness, and numerous knowledgeable stakeholders including the Commission to end Homelessness, homeless shelter and service providers, faith based organizations, and the Orange County Congregation Community Organization. City of Fullerton, Parks and Recreation Department, Staff Report regarding Proposed OC Emergency Homeless Shelter Multi-Jurisdictional Agreement (June 18, 2013), Draft Agreement, paragraphs E, F and G, available at <http://www.cityoffullerton.com/web/links/1/doc/520126/Page1.aspx> (last visited September 4, 2013).

impermissible discretionary approvals, thereby directly discouraging rather than facilitating development of emergency shelters.

**a. Background -- Fullerton's 2010 Housing Element promises to implement SB 2's "by right" zoning to meet the needs of its residents but Fullerton's late effort fails**

Policy Action 4.4 sought to revise the Fullerton Municipal Code ("FMC") to comply with SB 2 by amending higher density residential zones (or other suitable zones with sufficient capacity) to permit emergency shelters without discretionary approvals, with sufficient capacity to meet the local need. 2010 HE at 4-18. The 2010 element determined that the "R-3, R-4, and R-5 zones ... have sufficient capacity and are suitable zones for shelters" because "they are located primarily along major arterials and in close proximity to public transit," and "are also located within walking distance of retail and service areas." 2010 Element at 3-15. Fullerton was to implement its rezone within one year of the final Element, or by March 2, 2011. 2010 HE at 4-19.

Ordinance No. 3189 amends the Fullerton Municipal Code (FMC) sections 15.04.040, 15.30.03.A, 15.40.020.A, and 15.55.020. The amendments added emergency shelters and multiservice centers for the homeless as permitted uses, without need for a conditional use permit, in commercial zone classifications C-M (Commercial, Manufacturing) and industrial zone classifications M-P (Manufacturing Park) or M-G (Manufacturing, General). Ex. A at 2-3. In addition, Ordinance No. 3189 added a new subsection G to section 15.55.020 of the FMC, which imposes additional location restrictions and discretionary criteria for emergency shelters in these zones. Ex. A at 4-6.

Section 65583(a)(4) allows local governments to apply certain "written, *objective* standards" to emergency shelters within permitted zones, including "*only*": 1) a maximum number of beds or persons permitted to be served nightly by the facility, 2) off-street parking based on demonstrated need if comparable to other uses in the same zone, 3) size and location of exterior and interior onsite waiting and client intake areas, 4) the provision of onsite management, 5) the proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart, 6) length of stay, 7) lighting, and 8) security during hours that the emergency shelter is in operation. §65583(a)(4)(A) (emphasis added).

The FMC, however, includes *additional* location criteria and a *nonobjective* discretionary police department approval of a management plan. FMC 15.055.020.G(1)(f)(ii), (1)(g), Ex. A at 4-5. FMC Section 15.55.020.G(1)(f)(ii), adds the following "location criteria:"



A minimum of one quarter mile (1,320 feet) from any residential property designated by the Fullerton Plan for residential use, including residential within a mixed use development, accredited K-12 school or public park, as measured from the property line of the shelter/multiservice center site to the property line of the nearest residential, accredited school, or public park use as described herein.

Ex. A at 4. In addition, shelters in the permitted zones must submit a "Site Management Plan" for review and approval by the Community Development Director in consultation with the Chief of Police, and any changes to the plan are also "subject to review and approval." FMC Section 15.55.020.G(1)(g), Ex. A. at 4-5. This discretionary Management Plan must address matters such as "[p]rovisions for separation of sleeping areas for males, females and family units," "[p]lan for extending and receiving communications with neighbors, City staff, and general public," and "ratio of staff to clients." Ex. A. at 5.

Thus, although Ordinance 3189 purports to implement SB 2, it does not succeed in doing so. Where state law strictly limits the conditions that may be imposed on "by right" zones for emergency shelters, Fullerton has imposed an unauthorized condition – location distant from any residence (including in a mixed use development), school, or park. And it has imposed an unauthorized discretionary review of the management plan. These provisions fail to comply with state law, section 65583(a)(4)(A).

**b. Although Ordinance 3189's "location requirement" and discretionary approvals mean that it does not comply with SB 2's "by right" zoning for emergency shelters, the Draft does not analyze this constraint or other constraints imposed by its location restrictions**

The DHE describes the above conditions for "by right" zoning at Chapter 3, page 14, which states: "Emergency shelters and multi-service centers are permitted in those portions of the M-P, M-G and C-M zones that are located at least 1,320 feet from areas designated in The Fullerton Plan for residential use, accredited school or public park" and also acknowledges the required Site Management Plan.

However, the DHE does not "demonstrate" that these provisions "are objective and encourage and facilitate the development of, or conversion to, emergency shelters." §65583(a)(4)(A). Nor does it demonstrate that the development standards are equivalent to those standards that apply to commercial development within the same area. *Id.*, DHE

at 3-14 to 3-17. The DHE does not analyze the constraints imposed by Ordinance 3189. DHE at 3-14.

**i. Sites for shelters are not shown to be adequate**

Although it asserts that the available parcels are sufficient to accommodate the City's unmet need, the DHE provides little additional information to support its assertion that adequate sites are available to meet the shelter need – beyond the number of parcels and acreage. The available acreage calculations show that generally only very small parcels are available, and they fail to take into account such factors described in the 2010 Element as proximity to transportation, shopping and services. DHE at 3-14; 2010 HE at 3-15. Thus, without further analysis, the DHE does not show that adequate sites are available to meet emergency shelter needs.

The location requirement, in addition to not meeting state law criteria for a “by right” zone, also appears to make only very small sites available, with one exception. The DHE states, “Eligible sites include 61 parcels encompassing a total of 69 acres and ranging in size from approximately .1 to 35 acres.” DHE at 3-14. Taking out the 35 acre site, eligible sites would include 60 parcels encompassing a total of 34 acres – on average less than .5 acres per site. The DHE does not identify the small available acreage per parcel as a constraint, nor explain how small sites are developable. Further, as set forth above, it is silent as to other factors relating to suitability such as proximity to transportation, shopping and services. *Id.*

In addition, because, as set forth above, Fullerton's assessment of the need for shelters fails to meet state law criteria, its assessment of adequate sites should be revisited once it has more appropriately assessed the need.

Thus, the DHE fails to adequately analyze the “potential and actual constraints” on the provision of emergency shelters, in violation of Section 65583(a)(5).

**3. The DHE does not substantially comply with state law because it does not include programs to comply with section 65583(a)(4).**

Because Ordinance 3189 fails to meet state law criteria, the DHE does not substantially comply with state law until it includes a program, within one year, to amend its zoning ordinance to meet the requirements for zoning for emergency shelters. §65583(a)(4)(A) (“the local government *shall include* a program to amend its zoning ordinance to meet the requirements ... within one year of the adoption of the housing element). The draft, however, includes no such program. DHE at 4-18 to 4-19. The

draft does not substantially comply with state law until a program is included to remove this constraint. §§65583(a)(4)(A), (c).

Indeed, the DHE does not even explain with any specificity how it will meet the shelter needs that it documents beyond a general goal to "facilitate the establishment" of shelters. DHE at 4-18 to 4-19. The DHE states that there are 240 beds at existing shelter facilities, yet does not offer a credible plan for providing for the remaining 80 people in need of shelter at any given point in time that it identifies (and, as set forth above, grossly undercounts), in violation of §65583(c).

**4. Fullerton inaccurately reports it has implemented SB 2 rezoning**

As set forth above, Ordinance 3189 does not comply with SB 2. Nevertheless, the Review of Housing Element Past Performance states "a zoning ordinance amendment was adopted in 2013 consistent with SB2." DHE, Appendix A-12. Thus, the review of past performance does not accurately reflect the City's past performance.

The past performance review further states, "The City is concurrently working cooperatively with the County of Orange to locate a multi-service emergency shelter within the City." DHE, Appendix A-12. However, although the Planning Commission unanimously approved a proposed project for a multi-jurisdiction shelter, the City of Fullerton on June 18, 2013 rejected that proposal.<sup>3</sup>

**5. City of Fullerton demonstrated its resistance to the creation of emergency shelters by voting against the development of a year-round emergency shelter on June 18, 2013**

In January 2013, the County of Orange Board of Supervisors unanimously voted to approve the purchase of a property located at 301 South State College Blvd. in Fullerton (zoned C-M), to be used for the development of a year-round emergency shelter. The shelter would replace the current Fullerton Armory Emergency Shelter site, which does not operate on a year-round basis and is the only emergency shelter in the City of Fullerton (see DHE, page 2-52). Pursuant to section 65583(d), the County of Orange and the City of Fullerton considered entering into a multi-jurisdictional agreement for the development of the shelter. The City of Fullerton, however, put the proposed agreement for the development of the emergency shelter to a vote during a City

---

<sup>3</sup> The staff report in support of the shelter project is found here:  
<http://www.cityoffullerton.com/webink8/1/doc/520620/Page1.aspx> (last visited September 4, 2013).  
Minutes to the council meeting when the project was rejected are found here:  
<http://www.cityoffullerton.com/webink8/1/doc/520962/Page1.aspx> (last visited September 6, 2013).

Council meeting on June 18, 2013. During that meeting, the City Council voted against approving the proposed agreement for the development of the emergency shelter.

The City Council's failure to approve the proposed development of the shelter further demonstrates a lack of commitment to solving the problem of homelessness in the City of Fullerton. That lack of commitment is evident throughout the DHE.

#### **6. Conclusion**

For all of the foregoing reasons, we urge the HCD to find the City of Fullerton's draft housing element not in substantial compliance with state law.

---

EXHIBIT A

EXHIBIT A

THE FOLLOWING ORDINANCE WHICH AMENDS  
THE FULLERTON MUNICIPAL CODE HAS BEEN  
ADOPTED BY THE CITY COUNCIL BUT IS NOT  
YET INCLUDED IN THE ON-LINE MUNICIPAL CODE

**ORDINANCE NO. 3189**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
FULLERTON, CALIFORNIA, AMENDING FULLERTON MUNICIPAL  
CODE SECTION 15.04.040 - DEFINITIONS; TABLE 15.30.03.A -  
PERMITTED USES IN COMMERCIAL ZONE CLASSIFICATIONS; TABLE  
15.40.020.A - PERMITTED USES IN INDUSTRIAL ZONE  
CLASSIFICATIONS; SECTION 15.55.020 - SPECIAL USES PERMITTED  
WITH PROVISIONS FOR THE PURPOSE OF DEFINING AND CREATING  
STANDARDS RELATED TO EMERGENCY SHELTERS AND  
MULTISERVICE CENTERS FOR HOMELESS

ORDINANCE NO. 3189

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AMENDING FULLERTON MUNICIPAL CODE SECTION 15.04.040 - DEFINITIONS; TABLE 15.30.03.A - PERMITTED USES IN COMMERCIAL ZONE CLASSIFICATIONS; TABLE 15.40.020.A - PERMITTED USES IN INDUSTRIAL ZONE CLASSIFICATIONS; SECTION 15.55.020 - SPECIAL USES PERMITTED WITH PROVISIONS FOR THE PURPOSE OF DEFINING AND CREATING STANDARDS RELATED TO EMERGENCY SHELTERS AND MULTISERVICE CENTERS FOR HOMELESS

PRJ13-00080 - LRP13-00006

APPLICANT: CITY OF FULLERTON

WHEREAS, State Law includes many statutes pertaining to housing to address a broad range of housing needs throughout the State of California. Homelessness is one such housing need that affects people of all races, gender, age and geographic location, with an estimated 360,000 homeless individuals and families in California. The 2011 Orange County Point in Time Count and Survey determined that over 18,000 people become homeless in Orange County each year; and

WHEREAS, in order to assure access to services in every city and county for homeless individuals and families, the State has found that it is the responsibility of cities and counties to plan for and identify areas for emergency shelters, as part of their planning processes. The state directs cities and counties to locate emergency shelters at locations determined appropriate in their own communities; and

WHEREAS, the State Legislature adopted Senate Bill 2, Chapter 633 Statutes of 2007, which requires, in part, cities and counties to identify one or more zoning districts in which emergency shelters are allowed as a permitted use, without discretionary action. Furthermore, said zoning district(s) shall have the capacity to accommodate the identified year round and seasonal need for emergency shelter; and

WHEREAS, the County of Orange also recognizes the need to shelter its homeless population, and in 2010 adopted a Ten-Year Plan to End Homelessness (the "Plan") as recommended by the Orange County Commission to End Homelessness; and

WHEREAS, in September 2011, the Fullerton City Council established the Fullerton Task Force on Homelessness and Mental Health Services. The task force was charged with five duties, all focusing on improving the resources and services available in Fullerton for mentally ill and homeless members of the community; and

WHEREAS, based on issues which include, but are not limited to, traffic, noise and air quality, the establishment of emergency shelters and multi-service centers in industrial zones is not inconsistent with those zones such that the establishment of emergency shelters and multi-service centers in those zones will not detrimentally impact the neighboring industrial properties. The City Council therefore finds that the M-P, M-G and C-M zones are suitable zones for emergency shelters; and

WHEREAS, the City Council and Planning Commission, after due notice thereof, duly held public hearings on said application; and

WHEREAS, the City of Fullerton has prepared an Initial Study and Negative Declaration pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15070, and in conformance with the Local CEQA Guidelines concludes that there is no substantial evidence of a fair argument that that emergency shelters and multi-service centers may significantly impact the environment; and

WHEREAS, the City is cognizent of the fact that, under State law, a County can establish a land use on property it owns within the jurisdiction of a city without complying with the city's zoning regulations. In an effort gain some input and control of the the establishment of an emergency shelter and multi-service center on County owned land within the City, the City has chosen to incentivize the County to enter into an enforceable multi jurisdictional agreement with the City.

NOW THEREFORE, The City Council of the City of Fullerton does hereby Ordain as follows:

**SECTION 1:** Fullerton Municipal Code (FMC) Section 15.04.040 is hereby amended by adding or, where appropriate modifying the following definitions in their appropriate alphabetical location:

**EMERGENCY SHELTER FOR HOMELESS** means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less, and where shelter is provided on a first-come-first-served basis. No individual or household may be denied emergency shelter because of an inability to pay. Temporary shelters established in response to an emergency or disaster (such as flood, fire or cold-weather occurrences), or temporary shelters ancillary to a church use do not fall within this definition.

**MULTISERVICE CENTER FOR HOMELESS** means a site which is operated under the auspices of a governmental or non-profit agency, pursuant to a County or regional plan to end homelessness, for the purpose of bringing together essential services to meet the needs and development of homeless clients. Multiservice Center operations shall include intake, assessment, and individualized case management services for homeless clients. Services provided shall address basic and immediate necessities, such as overnight shelter, showers, food, medical attention and mental health services, as well



as higher level needs including, but not limited to, computer access, job training and placement, life skills coaching and legal assistance. Housing would be available for up to six months, until a transitional or permanent housing option would be available.

**RELIGIOUS INSTITUTION** means an establishment the principal purpose of which is religious worship and for which the primary space is a sanctuary. Religious activities and services held in the sanctuary are conducted at scheduled times and in an organized fashion. The establishment may also include accessory facilities in the same or separate building including classrooms, assembly rooms, restrooms, kitchen, library or reading room, emergency shelter for 12 or fewer homeless individuals and a one-family dwelling unit for use by the titular head of the institution. Facilities for uses that have been defined separately in the Code, such as a day nursery, private school, community/social service or a human service agency, are not considered an inherent part of this establishment.

**SECTION 2:** Table 15.30.030.A, is hereby amended by adding the following to the Permitted Uses in Commercial Zone Classifications in the appropriate alphabetical order:

Table 15.30.030. A Permitted Uses in Commercial Zone Classifications							
		Zone Classification					
Use	Additional Requirements	O-P	C-1	C-2	C-3	C-H	C-M
Emergency Shelter for Homeless	See 15.55.020.G.						X
Multiservice Center for Homeless	See 15.55.020.G.						X

**SECTION 3:** Table 15.40.020.A, hereby amended by adding the following to the Permitted Uses in Industrial Zone Classifications (as Non-Classified Uses) in the appropriate alphabetical order::

Non-Classified Uses	M-P or M-G Zone
Emergency Shelter for Homeless (pursuant to Section 15.55.020.G of this Title)	X
Multiservice Center for Homeless (pursuant to Section 15.55.020.G of this Title)	X

**SECTION 4:** A new subsection "G" is hereby added to section 15.55.020 to read in its entirety as follows:

**15.55.020.G Emergency Shelter for Homeless or Multiservice Center for Homeless**

1. Where permitted, Emergency Shelters and Multiservice Centers for Homeless shall be in accordance with the following criteria:
  - a. A maximum of 50 beds or persons may be served nightly.
  - b. Facility shall comply with the development standards of the zone in which it is located, except as provided in Section 15.55.020.G.1.
  - c. Off-street parking shall be provided on the basis of one space per staff person on site during the peak time of shelter operation, plus one space per each 15 beds. A covered and secured area shall also be provided for bicycle parking, commensurate with the demonstrated need.
  - d. Client waiting and intake areas shall be screened from the public right of way, and shall be of sufficient size to accommodate all persons waiting to be let in.
  - e. The length of stay of an individual client shall not exceed six months within a twelve month period; days of stay need not be consecutive.
  - f. Location criteria:
    - i. There shall be a buffer of at least 250 feet from any other emergency shelter or multiservice center, as measured from the property line of one site to the nearest property line of the other.
    - ii. A minimum of one quarter mile (1,320 feet) from any residential property designated by The Fullerton Plan for residential use, including residential within a mixed use development, accredited K-12 school or public park, as measured from the property line of the shelter/multiservice center site to the property line of the nearest residential, accredited school, or public park use as described herein.
  - g. An applicant or operator shall submit a Site Management Plan for review and approval by the Community Development Director in consultation with the Chief of Police at the time the project is proposed,

prior to issuance of permits. Management Plan shall address the following issues consistent with best practices:

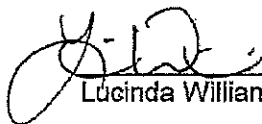
- i. Hours and days during which the shelter will be open; shelters open more than 12 hours per day shall provide homeless support services;
  - ii. List of the services to be provided;
  - iii. Measures to ensure that waiting and intake areas (as required in 15.55.020.G.1.d above) are effectively utilized to minimize clients congregating or loitering elsewhere onsite or offsite in project vicinity prior to admittance;
  - iv. Procedures for redirecting those clients seeking admittance who cannot be accommodated by the facility;
  - v. Provisions for separation of sleeping areas for males, females and family units;
  - vi. Plan for litter and trash removal attributable to clients, onsite and within the project vicinity, in a timely manner;
  - vii. Plan for extending and receiving communications with neighbors, City staff, and general public;
  - viii. Ratio of staff to clients;
  - ix. Security plan for operating and non-operating hours, both onsite and offsite in the shelter and its vicinity, including secured access; screening and admittance of clients; compliance with Fullerton Municipal Code Chapter 7.150; nighttime illumination of site; prohibitions against weapon possession, violent or criminal activity and use of alcohol or narcotics on the property; and establishing procedures for responding to emergencies and incidents, including expelling clients from the facility;
  - x. Provisions for offering services to veterans;
  - xi. Changes to the Management Plan shall be subject to review and approval by the City of Fullerton Community Development Director in consultation with the Chief of Police.
- h. Any emergency shelter or multi-service center proposed within the RPZ or APZ for Fullerton Municipal Airport shall comply with all applicable standards set forth in the *Airport Environs Land Use Plan for Fullerton Municipal Airport (AELUP)* as adopted by the Orange County Airport Land Use Commission.
- i. Any emergency shelter or multi-service center proposed within the 65 dB CNEL noise contour for Fullerton Municipal Airport shall be subject to review by the Orange County Airport Land Use Commission and shall be required to ensure interior noise levels from aircraft operations are at or below 45 dB CNEL.

2. Emergency Shelters for and Multiservice Centers for Homeless are encouraged to incorporate the following features:
  - a. Facilities for cooking and eating
  - b. Outdoor areas for activity or dining use
  - c. Laundry facilities available for use by clients
  - d. Secured storage space, out of public view, for client belongings
  - e. Located within one-half mile of a transit stop
  - f. Showers
3. Emergency Shelters and Multiservice Centers for Homeless in zones in which they are permitted and not meeting one or more of the criteria outlined above shall be subject to a conditional use permit in accordance with Section 15.70 of this title.
4. Emergency Shelters or Multiservice Centers for Homeless that are subject to a multi-jurisdictional agreement, pursuant to California Government Code Section 65583(d), shall be considered a permitted use even if inconsistent with the criteria in 15.55.020.G.1 above, provided the agreement includes standards and operational criteria acceptable to the City, that are considered during a public process for which public notice, pursuant to Section 15.76.040.B, has been provided.
5. The permit processing, development, and management standards applied under this paragraph shall not be deemed to be discretionary acts within the meaning of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

ADOPTED BY THE FULLERTON CITY COUNCIL ON JUNE 4, 2013.

  
\_\_\_\_\_  
Bruce Whitaker, Mayor

ATTEST:

  
\_\_\_\_\_  
Lucinda Williams, City Clerk

June 10, 2013  
Date

City of Fullerton  
ORDINANCE CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF FULLERTON )

ORDINANCE NO. 3189

I, Lucinda Williams, City Clerk and ex-officio Clerk of the City Council of the City of Fullerton, California, hereby certifies that the whole number of the members of the City Council of the City of Fullerton is five; and that the above and foregoing Ordinance No. 3189 had first reading by title only, introduction, and further reading waived at the May 21, 2013 City Council regular meeting and was adopted at the June 4, 2013 City Council regular meeting by the following vote:

COUNCIL MEMBER AYES:	Chaffee, Flory, Fitzgerald
COUNCIL MEMBER NOES:	Whitaker
COUNCIL MEMBER ABSTAINED:	None
COUNCIL MEMBER ABSENT:	Sebourn

  
\_\_\_\_\_  
Lucinda Williams, City Clerk

# Exhibit B

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833  
(916) 263-2911 / FAX (916) 263-7453  
[www.hcd.ca.gov](http://www.hcd.ca.gov)



September 10, 2013

Joan Wolff, Planning Manager  
City of Fullerton  
303 West Commonwealth Avenue  
Fullerton, CA 92832

Dear Ms. Wolff:

**RE: Review of the City of Fullerton's 5<sup>th</sup> Cycle (2013-2021) Draft Housing Element**

Thank you for submitting Fullerton's draft housing element received for review on July 12, 2013, along with additional revisions received on August 9, September 4 and 6, 2013. Communications with you and Mr. John Douglas, the City's consultant, facilitated the review. Pursuant to Government Code Section 65585(b), the Department is reporting the results of its review. The Department received subsequent revisions September 9, 2013 but was unable to fully consider these revisions prior to the statutory due date of September 10, 2013.

Pursuant to Government Code Section 65585(c), the Department received comments from the Western Center on Law and Poverty and Kennedy Commission on September 6 and September 9 respectively, but was unable to fully examine the information and consider the comments as part of this review. Consequently, the Department will retain the comments for full consideration in the next review of the housing element.

The draft element addresses many statutory requirements; however, revisions will be necessary to comply with State housing element law (Article 10.6 of the Government Code). The enclosed Appendix describes these and other revisions needed to comply with State housing element law.

Please note, to remain on an eight year planning cycle, pursuant to Senate Bill 375 (Chapter 728, Statutes of 2008) the City must adopt its housing element within 120 calendar days from the statutory due date of October 15, 2013 for SCAG localities. If adopted after this date, the City will be required to revise the housing element every four years until adopting at least two consecutive revisions by the statutory deadline (Government Code Section 65588(e)(4)). For additional information on housing element adoption requirements, please visit the Department's website at:  
[http://www.hcd.ca.gov/hpd/hrc/plan/he/he\\_review\\_adoptionsteps110812.pdf](http://www.hcd.ca.gov/hpd/hrc/plan/he/he_review_adoptionsteps110812.pdf).

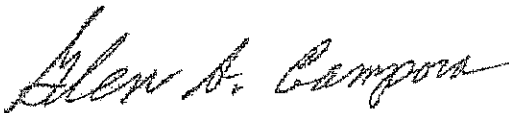
Ms. Wolff, Planning Manager  
Page 2

---

The Department is pleased to inform the City that prior 4<sup>th</sup> cycle housing element compliance meets one of the threshold requirements of the Housing-Related Parks (HRP) Program which rewards local governments for approving housing affordable to lower-income households. The HRP Program, funded by Proposition 1C, provides grant funds to eligible local governments for every qualifying unit permitted since 2010. Grant awards can be used to fund park-related capital asset projects. More specific information about the Program is available on the Department's website at <http://www.hcd.ca.gov/hpd/hrpp/>.

The Department is committed to assisting Fullerton in addressing all statutory requirements of housing element law. If you have any questions or need additional technical assistance, please contact Lindy Suggs, of our staff, at (916) 263-7433.

Sincerely,

A handwritten signature in cursive script that reads "Glen A. Campora".

Glen A. Campora  
Assistant Deputy Director

Enclosure



## APPENDIX CITY OF FULLERTON

The following changes would bring Fullerton's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on the Department's website at [www.hcd.ca.gov/hpd](http://www.hcd.ca.gov/hpd). Among other resources, the Housing Element section contains the Department's latest technical assistance tool, *Building Blocks for Effective Housing Elements* (*Building Blocks*), available at [www.hcd.ca.gov/hpd/housing\\_element2/index.php](http://www.hcd.ca.gov/hpd/housing_element2/index.php) and includes the Government Code addressing State housing element law and other resources.

### A. Housing Needs, Resources, and Constraints

1. *Include an inventory of land suitable for residential development, including vacant sites and sites having the potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites (Section 65583(a)(3)). The inventory of land suitable for residential development shall be used to identify sites that can be developed for housing within the planning period (Section 65583.2).*

The City has a regional housing need allocation (RHNA) of 1841 housing units, of which 710 are for lower-income households. To address this need, the element relies on sites located in the Fullerton Transportation Center Specific Plan (FTCSP) area. To demonstrate the adequacy of these sites and strategies to accommodate the City's RHNA, the element must include complete analyses:

Sites Inventory: The element did not address this requirement. At a minimum, the element must be revised as follows:

- Each parcel in the inventory of sites must be listed individually.
- Table B-5 must be revised to include the geographical area of each site (i.e. MU-A, MU-B, or MU-C) to indicate the allowable uses and density ranges.

Suitability of Non-Vacant Sites: While the element provides very general descriptions of existing uses on non-vacant and underutilized FTCSP sites (Table B-5), it must also demonstrate the potential for redevelopment and evaluate the extent to which existing uses may impede additional residential development. For example, one site indicates an existing use of a fire station, while others list uses such as office and retail. The element, however, provides no information about the appropriateness of these sites or the potential for the uses to be discontinued. The element could consider including an analysis similar to what was used in the previous element (see page B2-3). For more information, refer to the sample analysis on the Building Blocks website at: [http://www.hcd.ca.gov/hpd/housing\\_element2/SIA\\_zoning.php#nonvacant](http://www.hcd.ca.gov/hpd/housing_element2/SIA_zoning.php#nonvacant).

Emergency Shelters: The element notes the City revised its zoning code in 2013 to allow emergency shelters by-right in sections of the M-P, M-G, and C-M zones (page 3-14). However, to demonstrate compliance with Chapter 633, Statutes of 2007 (SB 2), the element must also include an analysis of the suitability and appropriateness of the identified area for the development of emergency shelters

by-right. In addition, while the element states eligible sites include 61 parcels encompassing a total of 69 acres ranging in size from 0.1 to 35 acres (page 3-14), it does not describe typical parcel size and characteristics to demonstrate their suitability for the development of emergency shelters. For example, typical emergency shelters include 40 to 60 beds. The element should expand upon the description of the parcel sizes to demonstrate their potential to fully accommodate the City's need. The element must also evaluate the requirement that shelters be located at least 1,320 feet from residential areas, schools, and public parks as a potential constraint to the development of emergency shelters.

Transitional and Supportive Housing: Transitional and supportive housing must be permitted in all zones allowing residential uses and not be subject to any restrictions (e.g., occupancy limit) not imposed on similar dwellings (e.g., single family, multifamily) in the same zone. For example, transitional housing as a multifamily use in a multifamily zone must be permitted in the same manner as multifamily in the same zone. Likewise, supportive housing as a single family use in a single family zone must be permitted in the same manner as a single family use in the same zone. Fullerton's zoning appears inconsistent with this requirement. As a result, the element must include an analysis and programs, as appropriate, to address the potential constraint in compliance with Section 65583(a)(5). Specifically, as noted in the element (page 3-4), transitional and supportive housing appear to only be permitted in some of the zones which allow for residential uses. However, as described above, transitional and supportive must be permitted in all zones allowing residential uses, including any mixed-use, commercial or specific plan areas.

### **C. Housing Programs**

1. *Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels. Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low- and low-income households (Section 65583(c)(1)).*

As noted in Finding A-1, the element does not include a complete site analysis and, therefore, the adequacy of sites and zoning was not established. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types. In addition, the element should be revised as follows:

Policy Action 1.1: Provision of Sites for Housing Development: As noted in the element, the City did not fully implement the required rezone program from the previous planning period. While the City rezoned approximately 39 acres of land in the FTCSP for higher density mixed-use development by right, none of the FTCSP sites are designated exclusively for residential uses as required by Government Code Section 65583.2(h). In the prior planning period, the City identified a shortfall of 647 units of which 324 units were to be accommodated on sites designated as exclusively residential. The City has included Policy Action 1.1 to fully address the statutory requirement of 65583.2(h) and (i), through the rezoning additional sites for exclusively residential uses. The proposed program, however, must indicate the candidate rezone site(s), total acreage, proposed zoning and a program implementation date no later than one year from the beginning of the 5<sup>th</sup> cycle planning period (October 15, 2014) pursuant to Chapter 614, Statutes 2005 (AB 1233).

In addition, the City should include a program commitment to evaluate the appropriateness and continued availability of identified parcels within the M-P, M-G and C-M zones in accommodating and facilitating the City's identified need for emergency shelters by-right.

## Appendix H: Sample Citizen Participation Plan

## Sample Citizen Participation Plan

### I. Overview

The City invites comments from its citizens on critical planning issues and decisions for the CDBG and HOME Programs. The City commits to provide the general public and interested and affected persons with ample notification of these critical actions and ample time to comment. Meetings will take place at City Hall or other accessible locations in the community.

At a minimum, the Citizen Participation Plan shall apply to the following: (1) the Consolidated Plan, (2) the Annual Plan, (3) Performance Reports, and (4) substantial amendments to these documents.

The City will prepare a Five Year Consolidated Plan. The City may prepare an Annual Plan each fiscal year or the City may prepare multiple Annual Plans in one fiscal year.

Performance Reports shall be prepared as required by the U.S. Department of Housing and Urban Development (HUD) and shall also be subject to the provisions of the Citizen Participation Plan.

The City may consider substantial amendments to any of these plans or documents. In such cases, the City will invite public comments.

The subsequent sections of the Citizen Participation Plan address the specifics of how and when the public will be notified, how they may provide comments, how long they will have to comment, and where documents will be available.

### II. Public Hearings

#### A. Consolidated Plan

Every five years, the City shall conduct at least two public hearings on its Consolidated Plan. The public hearings may be conducted by the Community Development Commission and/or the City Council. The first public hearing shall be conducted to receive input and comments on the City's needs and priorities. This input shall be considered by the City in the development of the Consolidated Plan.

The second public hearing shall be conducted after the City has prepared a draft of the Consolidated Plan. The purpose of the public hearing shall be to receive comments and input on the draft Consolidated Plan.

**B. Annual Plan**

The City shall conduct at least two public hearings every year on its Annual Plans. The City may adopt multiple Annual Plans in one year. For example, in Fiscal Year 1995/96, the City may adopt Annual Plans for Fiscal Year 1996/97, 1997/98, 1998/99, and 1999/2000.

The first public hearing shall be conducted to receive comments and input on housing and community development needs and proposed activities. The purpose of the public hearing shall be to determine how the needs may have significantly changed from those identified in the Consolidated Plan and what, if any, changes in proposed activities may be appropriate.

The second public hearing shall be conducted to receive comment and input on the proposed Annual Plan(s).

**C. Performance Reports**

The City shall conduct at least one public hearing on any performance report required by HUD. The purpose of the public hearing shall be to receive comment and input on the contents of the draft performance report.

**D. Substantial Amendments**

A substantial amendment is defined as the addition or deletion of any program or activity. A substantial amendment also includes any change in statistical data of 20% or more in the Consolidated Plan, Annual Plan, or Performance Report.

Amendments that are NOT substantial are: increases or decreases in the amount of funds allocated to an approved project or activity, to achieve the original purpose of the project or activity.

At least one public hearing is required for a substantial amendment to any of the plans or documents.

### **III. Public Notice**

At least fourteen (14) days prior to each public hearing the City shall publish a notice in the local newspaper at least twice. The notice shall indicate the place, time, and location of the public hearing. The notice shall provide sufficient information on the purpose of the public hearing.

The notice shall be a display advertisement in the non-legal section of the newspaper.

At least fourteen (14) days prior to each public hearing the City shall provide local Chambers of Commerce, ethnic organizations, the Housing Authority, the public libraries, and interested persons, with a copy of the public notice at least twice.

The public notice for the proposed Consolidated Plan will include a summary of the Plan. It shall indicate the amount of assistance the City expects to receive (grant funds and program income), the range of activities that may be undertaken, and the estimated amount of funds that will benefit low/moderate income persons. This summary shall describe the contents and purposes of the Consolidated Plan. It shall also list the locations where the Consolidated Plan will be available for examination. These locations shall include at least the following - the City Clerk's Office of City Hall, the Housing and Community Development Division of the City, and local public libraries.

### **IV. Comment Period**

The City shall provide a period of at least thirty (30) days to receive comments on the draft Consolidated Plan and on any substantial amendments. The 30-day period may start on the date the document is available to the public. The City must also provide public notice regarding the availability of documents and the dates of the 30-day comment period.

For performance reports and annual plans, the City shall provide at least fifteen (15) days to receive public comment.

The City shall consider all comments received. The City shall respond to all complaints, in writing, within fifteen (15) days. All comments and responses shall be attached to the document.

### **V. Availability of Documents**

The Consolidated Plan, Annual Plan, Performance Report, and any amendments shall be available to the public at the City Clerk's Office and Housing and Community Development Division Office during normal working hours, and on the City's Internet Website. The documents shall be provided to the interested party within three (3) working days of their request.

The documents shall be retained for at least five (5) years.

The City shall make available at least ten (10) free copies of the Consolidated Plan to local residents or organizations.

## **VI. Technical Assistance**

The City shall provide up to *forty* (40) hours per year of technical assistance to organizations that represent low/moderate income persons. This technical assistance may include:

- publishing instructions on how to fill out forms/applications;
- conducting workshops to explain: (1) the process for submitting proposals and (2) federal and local requirements;
- providing comments and advice on the telephone or in meetings; and
- reviewing and commenting on draft proposals.

The City shall also provide ongoing assistance to CDBG-funded agencies as needed to help them maintain their eligibility for full funding.

The City may provide additional (beyond forty (40) hours) technical assistance if, in the opinion of the City Manager, staff time is available.

## **VII. Assistance to Non-English Speaking**

When City staff reasonably expects a significant number of non-English speaking residents to participate at a public hearing, the City will make a translator available at the meeting.

## **VIII. Displacement**

The federal regulations stipulate that the City shall include in its Citizen Participation Plan the City's "plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance. . . ."

The City has adopted (Resolution 81-723) a General Relocation Plan. This plan meets the requirements of 24 C.F.R. §91.105(b)(1). It is attached.





## Appendix I: HUD's Consolidated Plan Checklist (Entitlement Jurisdictions)

## CONSOLIDATED PLAN CHECKLIST - ENTITLEMENTS

Grantee: _____	Period Covered by Consolidated Plan: <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 years
	Start year: _____ End Year: _____
Reviewed by: _____	Date: _____
Programs covered by plan: <input type="checkbox"/> CDBG <input type="checkbox"/> HOME <input type="checkbox"/> ESG <input type="checkbox"/> HOPWA	
Date plan received in IDIS: _____	
<input type="checkbox"/> Original, signed SF 424 received	Date Received: _____
<input type="checkbox"/> Original, signed Certifications received	Date Received: _____
Automatic approval date: _____	
<b>Note:</b> The 45 day review period begins when the Field Office receives either the signed, hard copies of the SF-424 and Certifications or email notification that the Con Plan has been submitted in IDIS.	

AD-25: Consortia Specific				
If a Consortia, list participating communities & note status	Lead	HOME funds only	CDBG Entitlement	ESG Entitlement
	<b>Yes</b>	<b>No</b>	<b>Comments/Verification</b>	
Did the lead select Consortia and the plan type and enter all participating communities and their status correctly?	<input type="checkbox"/>	<input type="checkbox"/>		
Did each of the CDBG and ESG entitlement communities complete an attached participating consortium plan?	<input type="checkbox"/>	<input type="checkbox"/>		
<i>If any of the entitlement participating members are missing or an entitlement participating member has completed a standalone plan, immediately send this submission back to the jurisdiction for correction.</i>				
<i>For additional information on how consortia plans should be set up in the system, consult the e-Con Planning Suite Desk Guide at <a href="https://www.hudexchange.info/resource/2641/econ-planning-suite-desk-guide-idis-conplan-action-plan-caper-per/">https://www.hudexchange.info/resource/2641/econ-planning-suite-desk-guide-idis-conplan-action-plan-caper-per/</a>. Incorrectly set-up plans cannot be approved until set-up correctly.</i>				

AD-25: Administration 91.220(a)			
Has the original Standard 424 Form ( (DUNS) Number in block 8(c)) with the applicable programs, the correct dollar allocations, and signed by the appropriate official been received by the field office? <i>Note: Grantees can upload a scanned copy in the AD-25 screen, but they are still required to submit one original signed copy of each document to HUD.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: Attachments may not download with a Word report of the plan. Citizen Participation, grantee unique appendices and SF-424 certification attachments can be downloaded as appendices.</i>			

<b>ES-05: Executive Summary 91.200</b>			
Does the plan contain a concise executive summary that includes:	Yes	No	Comments/Verification
Objectives and outcomes?	<input type="checkbox"/>	<input type="checkbox"/>	
An evaluation of past performance?	<input type="checkbox"/>	<input type="checkbox"/>	
A summary of the citizen participation process and public comments?	<input type="checkbox"/>	<input type="checkbox"/>	
A description of efforts made to broaden public participation in the development of the consolidated plan?"	<input type="checkbox"/>	<input type="checkbox"/>	
<b>PR-05: Lead and Responsible Agencies</b>			
Is there a description of the lead agency or entity responsible for overseeing the development of the Consolidated Plan? Also see PR-10 and PR-15	<input type="checkbox"/>	<input type="checkbox"/>	
<b>PR-10: Consultation/Coordination 24 CFR 91.100, 91.200 91.215(l), 91.220</b>			
Does the plan provide a concise summary of the grantee's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies (91.215(l))?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe coordination with continuums of care and efforts to address the needs of homeless persons (particularly homeless individuals and families, families with children, veterans and unaccompanied youth) and persons at risk of homelessness?	<input type="checkbox"/>	<input type="checkbox"/>	
ESG Specific: If a jurisdiction receives an ESG grant, does its plan describe the grantee's consultation with continuums of care to determine how to allocate ESG funds, develop performance standards and evaluate outcomes of projects and activities assisted with ESG funds and develop funding policies and procedures for the operation and administration of HMIS?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe coordination with the following entities in preparing the jurisdiction's homeless strategy and resources available to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans and unaccompanied youth) and persons at risk of homelessness?	<input type="checkbox"/>	<input type="checkbox"/>	
Housing Services and Assisted Housing	<input type="checkbox"/>	<input type="checkbox"/>	
Health Services	<input type="checkbox"/>	<input type="checkbox"/>	
Social and fair housing services, including those focusing on services to children, elderly person, persons with disabilities, persons with HIV/AIDS and their families , and homeless persons	<input type="checkbox"/>	<input type="checkbox"/>	
Continuum(s) of Care that serve the jurisdiction's geographic area	<input type="checkbox"/>	<input type="checkbox"/>	
Public and private agencies that address housing, health, social service, victim services, employment, or education needs of: Low-income individuals and families Homeless individuals and families, including veterans, youth and persons with special needs	<input type="checkbox"/>	<input type="checkbox"/>	

Publicly funded institutions and systems of care that may discharge persons into homelessness, such as: Health-care facilities Mental health facilities Foster care and other youth facilities Corrections programs and institutions	<input type="checkbox"/>	<input type="checkbox"/>	
Business and Civic Leaders	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe consultation with the following entities in preparing the portion of the jurisdiction's plan concerning lead-based paint hazards: State and local health and child welfare agencies, including health department data on the addresses of housing units in which children have been identified as lead-poisoned	<input type="checkbox"/>	<input type="checkbox"/>	
Adjacent units of general local government and regional government agencies, particularly agencies with metropolitan-wide planning and transportation responsibilities that go beyond a single jurisdiction.	<input type="checkbox"/>	<input type="checkbox"/>	
Persons, especially low income persons, living in areas designated by the local jurisdiction as a revitalization area, areas designated by either a local jurisdiction or as a slum and blighted area and areas where CDBG funds are proposed to be used.			
State / County (Metro. City)	<input type="checkbox"/>	<input type="checkbox"/>	
HOPWA Metro-wide Jurisdictions (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	
Public Housing Authority and/or Public Housing Agencies, including participation of residents of public and assisted housing developments (including any resident advisory boards, resident councils, and resident management corporations).	<input type="checkbox"/>	<input type="checkbox"/>	
Community-based and regionally based organizations that represent protected class members and organizations that enforce fair housing laws, including participants in the Fair Housing Assistance Program (FHAP), fair housing organizations, nonprofit organizations receiving funding under the FHIP program, and other public and private fair housing service agencies to the extent these entities operate within the grantee's area.  <i>Note: At a minimum the grantee's consultation process should specifically seek input on how the goals identified in an accepted AFH inform the priorities and objectives of the consolidated plan.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan identify any of the agency types described above that were not consulted and provide a rationale for not consulting?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe other local/regional/state/federal planning efforts considered when preparing the plan? ( <b>Note:</b> Continuum of care must be described, additional efforts are encouraged but not grounds for disapproval of a plan.)	<input type="checkbox"/>	<input type="checkbox"/>	

With respect to the public entities involved, does the plan describe the means of cooperation among the state and local units of government in the metropolitan area in the implementation of the plan? This can be demonstrated by checking boxes on the table to indicate which agencies consulted with meet this description.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>PR-15: Citizen Participation § 91.105, 91.200(c)</b>			
<i>Note: If a jurisdiction adopted a citizen participation plan before August 17, 2015, it will need to amend the citizen participation plan to comply with the new AFFH Final Rule.</i>			
Does the Consolidated Plan include a description of the development of the plan and efforts to broaden public participation, including the names of organizations involved in the development of the plan?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan provide a summary of the citizen participation process and how it impacted goal setting?	<input type="checkbox"/>	<input type="checkbox"/>	
Is there a summary of the citizen participation process in the chart provided, and were the public hearing and comment period requirements satisfactory?	<input type="checkbox"/>	<input type="checkbox"/>	
Are citizen comments included in the plan, and are the comments specifically and adequately addressed by the grantee? Note: If no comments received check the yes box but there must be a narrative statement indicating no comments received.	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee provide a summary of comments not accepted and reasons for not accepting them in the chart provided?	<input type="checkbox"/>	<input type="checkbox"/>	
According to the table provided, did the grantee explore alternative public involvement techniques and the review of program performance (e.g. the use of focus groups or the internet?) Note: This is encouraged, but not grounds for disapproval of the plan.	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: The Grantee shall encourage the participation of local and regional institutions, the Continuum of Care, and other organization (including businesses, developers, non-profit organizations, philanthropic organizations, community, and faith-based organizations) in the process of developing and implementing the plan (91.105(a)(2)(ii). The grantee shall encourage the participation of low and moderate income persons residing in slum/blighted areas, residents in predominantly low and moderate income areas, and public housing residents. A jurisdiction is also expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.</i>			
<b>NA-10: Needs Assessment – Housing Needs Assessment 91.205(b)(1) AND 91.205(c)</b>			
Does the grantee provide a concise summary of the estimated housing needs projected for the ensuing 3, 4 or 5-year period? See also NA-05 to NA-50	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee identified the estimated number and types of families with housing needs for a <u>5 year</u> period? Family types (extremely low-, low-, moderate, and middle income) that must be identified are: <ul style="list-style-type: none"> <li>Extremely low-income, low-income, moderate-income and middle-income families, Renter/owner, Elderly, Single persons, Large families, persons with disabilities, victims of domestic violence, dating violence, sexual assault and stalking, formerly homeless receiving rapid re-housing assistance nearing termination.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	

Has the grantee described the number and type of single person households in need of housing assistance?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee estimated the number and type of families in need of housing assistance who are disabled or victims of domestic violence, dating violence, sexual assault and stalking?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: Tables do not address the number and type of single person households, families who are disabled, or victims of domestic violence, dating violence, sexual assault or stalking who are in need of housing assistance. This must be addressed in a discussion box on NA-10. Estimates of housing needs for the number of families that contain persons with disabilities for each community are available in CHAS Table 6 produced from the American Community Survey at: <a href="http://www.huduser.org/portal/datasets/cp/chas/data_download_chas.html">http://www.huduser.org/portal/datasets/cp/chas/data_download_chas.html</a>.</i>			
Based on the data provided, does the grantee discuss the most common housing problems? Housing problems for which data is provided include: <ul style="list-style-type: none"> <li>Severe cost and cost burden</li> <li>Overcrowding (especially for large families)</li> <li>Substandard housing</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee discuss whether any populations/household types described by the data are more affected than others by these problems?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee described the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but are at imminent risk of either residing in shelters or becoming unsheltered? Does this discussion also include the needs of formerly homeless families and individuals who are receiving rapid-rehousing assistance and are nearing termination of that assistance?	<input type="checkbox"/>	<input type="checkbox"/>	
If the grantee provides estimates of the at-risk population(s), does it also include a description of the operational definition of the at-risk group and the methodology used to generate the estimate?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee specify particular housing characteristics that have been linked with instability and an increased risk of homelessness?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the grantee insert language dealing with housing needs from the "impact and unmet needs assessment" section of their HUD-approved CDBG-DR Action Plan for disaster recovery if the community received federal disaster assistance?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>NA-30: Needs Assessment – Disproportionally Greater Housing Need 91.205(b)(2)</b>			
Has the grantee included a discussion of any racial or ethnic groups that have a disproportionately greater need in comparison to the needs of that income category as a whole? Housing needs include: <ul style="list-style-type: none"> <li>Housing problems – NA-15</li> <li>Severe Housing Problems – NA-20</li> <li>Cost Burden – NA-25</li> </ul> <i>Note: Disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial/ethnic group is at least 10% points higher than the percentage of persons in the category as a whole. 91.205 (b)(2)</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee indicate if there are other needs not identified above?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee indicate whether racial or ethnic groups identified on this screen are located in specific areas or neighborhoods in the community?	<input type="checkbox"/>	<input type="checkbox"/>	

<b>NA-35: Needs Assessment – Public Housing</b>			
Does the Plan describe the needs of public housing residents? These may include housing improvements; supportive services (i.e. child care, education, workforce development, accessibility); improved living environment (i.e. neighborhood revitalization, capital improvements, safety, crime prevention, drug elimination); economic opportunity (i.e. resident services, family self-sufficiency) Also see MA-25. <i>Note: Data provided in this screen is based on the Public Housing Agencies selected by the grantee when the plan was created. A list of those agencies can be found on screen AD-25.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Section 504 Needs Assessment: Has the grantee described the needs of public housing tenants and applicants on the waiting list for accessible units?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee described the number and type of families on the waiting lists for public housing and section 8 tenant-based rental assistance? Based on the information above, and any other information available to the grantee, what are the most immediate needs of residents of public housing and Housing Choice voucher holders?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee described how these needs compare to the housing needs of the population at large?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>NA-40: Needs Assessment – Homeless Needs Assessment 24 CFR 91.205(c)</b>			
Has the grantee satisfactorily identified the nature and extent of sheltered and unsheltered homelessness, including rural homelessness, within the jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	

In the tables provided on the screen, does the plan include for each category (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) the number of persons experiencing homelessness on a given night, the number of persons experiencing homelessness each year, the number of persons who lose their housing and become homeless each year, the number of persons who exit homelessness each year, the number of days that persons experience homelessness, and other measures specified by HUD?	<input type="checkbox"/>	<input type="checkbox"/>	
If the grantee identifies all or part of the homeless population is located in rural areas, has the grantee described the nature and extent of unsheltered and sheltered homelessness for persons in the rural areas?	<input type="checkbox"/>	<input type="checkbox"/>	
If data is not available for the categories "number of persons becoming and exiting homelessness each year," and "number of days that persons experience homelessness," does the grantee describe these categories for each homeless population type (including chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth)?	<input type="checkbox"/>	<input type="checkbox"/>	
In the screen tables, has the grantee estimated the number and type of families in need of housing assistance for families with children and the families of veterans?	<input type="checkbox"/>	<input type="checkbox"/>	
As a narrative, has the grantee identified the nature and extent of homelessness by racial/ethnic group, to the extent information is available? If not available, grantee should indicate this as well.	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Did the grantee insert language on homeless needs from the "impact and unmet needs assessment" section of their HUD-approved CDBG-DR Action Plan for disaster recovery <i>Note: As there is extensive information in CDBG-DR Action Plans on recovery needs, the grantee is only required to include an abbreviated version of this information.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>NA-45: Needs Assessment – Non-Homeless Special Needs Assessment 24 CFR 91.205(d)</b>			
Has the grantee described the characteristics of special needs populations?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee discussed the housing and supportive service needs of these populations and how these needs were determined?	<input type="checkbox"/>	<input type="checkbox"/>	
HOPWA specific: Pre-populated screens are present for HOPWA grantees only. Based on data provided, does the plan identify the size and characteristics of the population with HIV/AIDS and their families?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: The estimated number of non-homeless persons with special needs must include, to the extent practical the number of elderly, frail elderly, persons with mental, physical, developmental disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, public housing residents, and any other categories the grantee may specify. See tables on this screen for needs of persons with HIV/AIDS. Estimates of housing needs for the number of households containing persons with hearing, vision, cognitive, ambulatory, self-care, and independent living difficulty for each community are available in CHAS Table 6 produced from the American Community Survey at: <a href="http://www.huduser.org/portal/datasets/cp/chas/data_download_chas.html">http://www.huduser.org/portal/datasets/cp/chas/data_download_chas.html</a></i>			



<b>NA-50: Needs Assessment – Non-Housing Community Development Needs</b>			
Does the grantee describe their need for public facilities and how the need was determined?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee describe their need for public improvement and how the need was determined?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee describe their need for public services and how the need was determined?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Did the grantee insert language dealing with infrastructure and economic development needs from the “impact and unmet needs assessment” section of their HUD-approved CDBG-DR Action Plan for disaster recovery. Note: The grantee is only required to include an abbreviated version of this information.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>MA-10: Housing Market Analysis - Number of Housing Units 24 CFR 91.210</b>			
Has the grantee described the significant characteristics of the housing markets, including aspects such as supply, demand, cost and condition of housing? See MA-10 for supply and demand, MA-15 for cost and MA-20 for condition.	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee describe the number and targeting (income level/type of family served) of units assisted with federal, state, and local programs?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee provide an assessment of units expected to be lost from the affordable housing inventory for any reason, such as expiration of Section 8 contracts.	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee indicate whether the availability of housing units meets the needs of the population?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee describe the need for specific types of housing?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Did the grantee insert language on the number of housing units affected from the “impact and unmet needs assessment” section of their HUD-approved CDBG-DR Action Plan?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>MA-15: Housing Market Analysis – Cost of Housing</b>			
Does the grantee indicated whether there is sufficient housing for households at all income levels?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee discuss how affordability of housing is likely to change considering changes to home values and/or rents?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee discuss how HOME rents/Fair Market Rents compare to Area Median Rents and how this impacts their strategy to provide or preserve affordable housing?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Did the grantee insert language on the cost of housing from the “impact and unmet needs assessment” section of their HUD-approved CDBG-DR Action Plan?	<input type="checkbox"/>	<input type="checkbox"/>	

<b>MA-20: Housing Market Analysis – Condition of Housing</b>			
Does the plan define “standard condition” and “substandard condition but suitable for rehabilitation” in its Consolidated Plan?	<input type="checkbox"/>	<input type="checkbox"/>	
Vacant Units Table: Does the jurisdiction include an estimate of the number of vacant and abandoned buildings and whether the units in these buildings are suitable for rehabilitation?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the need for owner and rental rehabilitation based on the condition of the grantee’s housing?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee estimated the number of housing units occupied by low or moderate income families that contain lead-based paint hazards?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Did the grantee insert language on the condition of housing units affected from the “impact and unmet needs assessment” section of their HUD-approved CDBG-DR Action Plan?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>MA-25: Housing Market Analysis – Public &amp; Assisted Housing</b>			
Based on the data provided, does the grantee describe the number and physical condition of public housing units in the jurisdiction, including those that are participating in an approved Public Housing Agency Plan?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee describe the restoration and revitalization needs of public housing in the jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the public housing agency’s strategy for improving the living environment of low- and moderate-income families residing in public housing?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: Data provided in this screen is based on the Public Housing Agencies selected by the grantee when the plan was created. A list of those agencies can be found on screen AD-25.</i>			
<b>MA-30: Housing Market Analysis – Homeless Facilities &amp; Services 24 CFR 91.210(c)</b>			
Did the grantee provide data in the table of facilities and housing that meet the needs of homeless persons within the jurisdiction, particularly chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe services targeted to homeless persons and mainstream services, such as health, mental health and employment services to the extent those services are used to complement services targeted to homeless persons?	<input type="checkbox"/>	<input type="checkbox"/>	
If grantee listed these services and facilities on screen SP-40 (Institutional Delivery Structure) or screen MA-35 (Special Needs Facilities and Services), did they describe how these facilities and services specifically address the needs of these populations.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>MA-35: Housing Market Analysis – Special Needs facilities &amp; Services</b>			
Has the grantee described, to the extent information is available, the facilities and services that assist persons who are not homeless but who require supportive housing?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan specify the activities that the grantee plans to undertake during the next year to address the housing and supportive services needs identified for persons who are not homeless but have other special needs? Are these activities linked to one-year goals?	<input type="checkbox"/>	<input type="checkbox"/>	

<b>MA-40: Housing Market Analysis – Barriers to Affordable Housing 24 CFR 91.210(d)</b>			
Has the grantee described public policies that affect affordable housing? Factors which affect affordable housing <u>may</u> include:	<input type="checkbox"/>	<input type="checkbox"/>	
<ul style="list-style-type: none"> <li>Tax policies affecting land and other property, Land use controls, Zoning ordinances, Building codes, Fees and charges, Growth limits, Policies that affect the return on residential investment</li> </ul>			
<b>MA-45: Housing Market Analysis – Non-Housing Community Development Assets 24 CFR 91.215(f)</b>			
Does the plan describe the major employment sectors within the jurisdiction in the Business Activity table?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the workforce and infrastructure needs of businesses in the jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe any major changes that may have an economic impact, such as planning public or private sector investments or initiatives that have affected or may affect job and business growth opportunities during the planning period and any needs for workforce development, business support or infrastructure these changes may create? <i>Note: The Desk Guide clarifies that the grantee should identify the need for economic development activities, including job training, business assistance, and infrastructure development.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe how the skills and education of the current workforce correspond to employment opportunities in the jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe current workforce training initiatives and how these efforts will support the grantee's consolidated plan?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan indicate whether the jurisdiction participates in a Comprehensive Economic Development Strategy (CEDS)? If yes, does the plan indicate what economic development initiatives are you undertaking that may be coordinated with the Consolidated Plan? If not, does the plan describe other local/regional plans or initiatives that impact economic growth?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>MA-50: Market Analysis – Needs and Market Analysis Discussion 91.210(a)</b>			
Does the grantee provide a definition of "concentration"? <b>Note:</b> Definitions of concentration should include separate definitions for minority concentration and low-income concentration.	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee describe if:	<input type="checkbox"/>	<input type="checkbox"/>	
There are areas where households with multiple housing problems are concentrated?	<input type="checkbox"/>	<input type="checkbox"/>	
There are any areas in the jurisdiction where racial or ethnic minorities or low-income families are concentrated?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the characteristics of the market in these areas/neighborhoods?	<input type="checkbox"/>	<input type="checkbox"/>	
Including community assets in these areas/neighborhoods?	<input type="checkbox"/>	<input type="checkbox"/>	
Including other strategic opportunities in these areas?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Did the grantee insert language dealing with the needs and market analysis discussion from the "impact and unmet needs assessment" section of their HUD-approved CDBG-DR Action Plan.	<input type="checkbox"/>	<input type="checkbox"/>	

<b>SP Screens: Strategic Plan 91.215</b>		
<i>Note: When reviewing this section of the Consolidated Plan, keep in mind that the priorities/objectives should relate to the needs identified in the Housing and Homeless Needs and Housing and Market Analysis sections. Information entered on these screens will download into the AP screens automatically.</i>		
<b>SP-10: Geographic Priorities 91.215(a)(1) and 91.215(g)</b>		
Does the grantee indicate the general priorities for allocating investment geographically within the jurisdiction (or within the EMSA for HOPWA) and among different activities and needs?	<input type="checkbox"/>	<input type="checkbox"/>
Does the grantee identify areas where geographically targeted revitalization efforts are carried out through multiple activities in a coordinated manner? <i>Note: This is encouraged, but not required and can be included in the narrative text box on SP-10 or an added text box.</i>	<input type="checkbox"/>	<input type="checkbox"/>
<b>SP-25: Priority Needs</b>		
Does the plan describe the grantee's priority needs? <i>Note: Click the "View Summary" button under the "Priority Needs" table on this screen to see a summary of the information on each individual Need screen.</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does the plan describe the grantee's priority homeless needs? <i>Note: This is accomplished by creating priority needs on this screen and classifying them as homeless needs.</i>	<input type="checkbox"/>	<input type="checkbox"/>
Does the plan include the priority housing and supportive service needs of persons who are not homeless but may or may not require supportive housing?	<input type="checkbox"/>	<input type="checkbox"/>
Does the grantee describe the rationale for establishing the allocation priorities given to each category of priority needs, particularly among extremely low-income, low-income and moderate-income households?	<input type="checkbox"/>	<input type="checkbox"/>
<b>SP-30: Influence of Market Conditions 91.215(b)</b>		
Does the grantee indicate which market characteristics will influence the use of funds available for the following?	<input type="checkbox"/>	<input type="checkbox"/>
Tenant Based Rental Assistance (TBRA)? The grantee should also specify the local market condition(s) that led to this choice.	<input type="checkbox"/>	<input type="checkbox"/>
TBRA for non-homeless special needs? The grantee should also specify the local market condition(s) that led to this choice.	<input type="checkbox"/>	<input type="checkbox"/>
New Unit Production?	<input type="checkbox"/>	<input type="checkbox"/>
Rehabilitation?	<input type="checkbox"/>	<input type="checkbox"/>
Acquisition, including preservation?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Note: This section should explain how the characteristics of the housing market, the severity of housing problems and the needs of the extremely low-income, low-income, and moderate-income rents, persons at risk of homelessness, and homeless persons identified in accordance with 24 CFR 91.205 provide the rationale for establishing the allocation priorities and use of funds made available for these housing types.</i>		

<b>SP-35: Anticipated Resources</b>			
In the chart provided, does the plan include the Annual Allocation, Program Income, Prior Year Resources, and Expected Amount Available for the remainder of the Con Plan for each identified funding source, (CDBG, HOME, ESG and HOPWA as appropriate, Section 8 funds, low income housing tax credits, and competitive McKinney-Vento Homeless Assistance Act funds) and other resources from private, state, and local sources that are reasonably expected to be made available to address the needs identified in the plan?	<input type="checkbox"/>	<input type="checkbox"/>	
Annual Allocation	<input type="checkbox"/>	<input type="checkbox"/>	
Program Income	<input type="checkbox"/>	<input type="checkbox"/>	
Prior Year Resources	<input type="checkbox"/>	<input type="checkbox"/>	
Expected Amount Available for remainder of Con Plan	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan explain how federal funds will leverage additional resources (private, state and local funds), including a description of how match requirements will be satisfied?	<input type="checkbox"/>	<input type="checkbox"/>	
Review match requirements:	<input type="checkbox"/>	<input type="checkbox"/>	
HOME: 25% match on all expenditures except planning and admin, CHDO operating, CHDO capacity building, and CHDO project specific expenses when repayment is waived by the PJ under §92.301.	<input type="checkbox"/>	<input type="checkbox"/>	
ESG: 100% match on all expenditures must be provided after the date that HUD signs the grant agreement. Cash, non-cash, and program income must meet requirements of § 576.201.	<input type="checkbox"/>	<input type="checkbox"/>	
If appropriate, does the plan describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Does the plan include CDBG-DR as a source of funding if the community was a recipient of federal disaster assistance?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: Information entered on this screen will appear on the AP-15 screen. This information on the AP-15 screen is not editable. To change the AP-15, the grantee must edit the SP-35 screen first.</i>			
<b>SP-40: Institutional Delivery Structure 91.215(k)</b>			
Does the grantee explain the institutional structure, including businesses, developers, nonprofit organizations, philanthropic organizations, community and faith-based organizations, philanthropic organizations, the Continuum of Care, and public institutions, departments and agencies through which the grantee will carry out its housing, homeless, and community development plan? This should also include a brief summary of what the grantee will do to overcome these gaps. <i>Note: this can be accomplished by filling out the table in SP-40. All the organization types are options that can be selected when adding "responsible entities" to this table.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan assess the strengths and gaps in the delivery system? This should also include a brief summary of what the jurisdiction will do to overcome these gaps.	<input type="checkbox"/>	<input type="checkbox"/>	

Using the chart provided, does the plan indicate the availability of services targeted to homeless persons and persons with HIV and mainstream services?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the extent to which services targeted to homeless person and persons with HIV and mainstream services, such as health, mental health and employment services are made available to and used by homeless persons (particularly chronically homeless individuals and families, families with children, veterans and their families and unaccompanied youth) and persons with HIV within the jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the strengths and gaps of the service delivery system for special needs population and persons experiencing homelessness, including, but not limited to, the services listed above?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan provide a summary of the strategy for overcoming gaps in the institutional structure and service delivery system for carrying out a strategy to address priority needs?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SP-45: Goals 91.215(a)(4)</b>			
Has the grantee summarized the priorities and specific objectives, describing how funds that are reasonably expected to be made available will be used to address identified needs?	<input type="checkbox"/>	<input type="checkbox"/>	
For each specific objective, has the grantee identified proposed accomplishments and outcomes the grantee hopes to achieve in quantitative terms over a specific time period, or in other measurable terms as identified and defined by the grantee?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan include specific objectives that describe the proposed accomplishments that the grantee hopes to achieve?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the Community Development component of the plan state the grantee's specific long-term and short-term community development objectives (including economic development activities that create jobs) that were developed in accordance with the primary objective of the CDBG program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate income persons?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the jurisdiction identify in its plan how it will address the needs of public housing? <i>Note: Public Housing is one of the categories grantees can assign to goals. Reviewing goals summary for goals designated as public housing goals will help answer this question.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan specify the number of extremely low, low, moderate, and middle income families, and homeless persons to whom the grantee will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period? <i>Note: The grantee should estimate the number of renter and owner households to whom the jurisdiction will provide affordable housing assistance separately for homeless persons and each income group. Other units assisted that do not meet the definition of "affordable housing" in the HOME regulations at 24 CFR 92.252 for rental housing may be discussed separately.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG-DR Specific: Does the plan reflect disaster recovery goals (including affordable housing goals) if applicable to be accomplished with CDBG-DR funding?	<input type="checkbox"/>	<input type="checkbox"/>	

<p><i>Note: This can be done by either 1) creating one goal that will encompass all accomplishments anticipated to result from the CDBG-DR program during the Strategic Planning Period, or 2) by folding anticipated CDBG-DR accomplishments into other program goals on this screen.</i></p>			
<p><i>Note: To view information for each Goal, click on the "View Summary" button under the Goals Table. Information entered on this screen will automatically transfer to the AP Goals Screens.</i></p>			
<p><b>SP-50: Public Housing Accessibility &amp; Involvement 91.215(c)</b></p>			
<p>If required by a Section 504 Voluntary Compliance Agreement, does the plan describe the need to increase the number of accessible units?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Does the plan describe the grantee's activities to encourage public housing residents to become more involved in management and participation in homeownership?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>If there is a troubled housing authority located within the jurisdiction, does the plan describe how the jurisdiction will provide financial or other assistance to improve the PHAs operations and remove the "troubled" designation?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>SP-55: Barriers to Affordable Housing 91.215(h)</b></p>			
<p>Does the plan describe the grantee's strategy to remove or ameliorate negative effects of public policies that serve as barriers to affordable housing as identified in the needs assessment section?</p> <p><i>Note: The text on this screen under the heading "Barriers to affordable housing" is a read-only copy of the discussion of barriers to affordable housing on MA-40. It is provided here for reference to assist grantees when they discuss strategies to remove or ameliorate these barriers.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>SP-60: Homelessness Strategy 91.215(d)</b></p>			
<p>Does the plan describe the grantee's strategy for reducing and ending homelessness through reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Does the plan describe the grantee's strategy for reducing and ending homelessness through addressing the emergency shelter and transitional housing needs of homeless persons?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Does the plan describe the grantee's strategy for reducing and ending homelessness through helping homeless persons (especially persons that are chronically homeless individuals and families, families with children, veterans, and their families and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Does the grantee describe the strategy for reducing and ending homelessness through to helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are likely to become homeless after being discharged from publicly funded institutions and systems of care or those receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs??</p>	<input type="checkbox"/>	<input type="checkbox"/>	



<b>SP-65: Lead-Based Paint Hazards 91.215(i)</b>			
Does the plan outline the actions to address lead based paint hazards and increase access to housing without lead based hazards?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss how the actions to address lead based paint hazards are related to the extent of lead poisoning and hazards?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss how the plan for reduction of lead-based paint hazards will be integrated into housing policies and programs?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SP-70: Anti-Poverty Strategy 91.215(j)</b>			
Does the plan describe the grantee's goals, programs, and policies for reducing the number of poverty level families?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe how the grantee's goals, programs and policies for producing and preserving affordable housing will be coordinated with other programs designed to serve persons at the poverty level (such as TANF and employment training programs)?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SP-80: Monitoring 91.230</b>			
Does the plan describe the standards and procedures that the grantee will use to monitor activities carried out in furtherance of the plan and ensure long-term compliance with requirements of the programs involved, including the comprehensive planning requirements?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>AP Screens: Action Plan</b>			
AP Screens contain prepopulated field containing information entered by the grantee in the NA, MA and SP screens. To change prepopulated information in AP screens, the grantee must first update their NA, MA or Sp screen.			
<b>AP-15: Expected Resources (see SP-35)</b>			
See Questions for SP-35 Screen.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>AP-20: Annual Goals &amp; Objectives 91.220(c)(3) &amp; (e)</b>			
Does the consolidated plan contain a summary of the annual objectives the grantee expects to achieve during the forthcoming program year? <i>Note: Annual goals are a subset of the Strategic Plan goals described in SP-45</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan include outcome measures for activities included in the AP in accordance with guidance issued by HUD?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG- DR Specific: Does the plan include annual goals for activities that received CDBG-DR funding if the community received federal disaster assistance?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>AP-35: Projects 91.220(d) and 91.220(l)(1)</b>			
Does the plan provide a description of the activities the grantee will undertake during the next year to address priority needs and objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Estimate the number and types of families (including income level) that will benefit from the proposed activities?	<input type="checkbox"/>	<input type="checkbox"/>	



Describe the specific local objectives and priority needs that will be addressed by the activities using formula grant funds and program income the grantee expects to receive during the program year? <i>Note: These needs are described on SP-25. Projects planned to address homeless and other special needs may also be addressed on AP-65 in the discussion text box. AP-35 describes the activities for the year in each project, including projects users plan to undertake relative to this requirement. Individual project details can be viewed by clicking "view" next to each project entry on this screen. An overview of project details can be seen by clicking "View Summary" at the bottom of the table on this screen.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Describe proposed accomplishments, and target date for completion of the activity?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the Plan include a description of activities for all CDBG funds (including program income and proceeds from Section 108 guarantees, etc.) expected to be available?	<input type="checkbox"/>	<input type="checkbox"/>	
Are CDBG activity descriptions in sufficient detail, including location, to allow citizens to determine the degree to which they are affected?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan indicate the reasons for allocation priorities and any obstacles to addressing underserved needs?	<input type="checkbox"/>	<input type="checkbox"/>	
CDBG- DR Specific: If the community received federal disaster, does the plan reference CDBG-DR allocation priorities in the text box on this screen and provide a link to the grantee's website where it's CDBG-DR Action Plan is posted as a resource for parties that wish to find out more?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: It is important that <u>all</u> CDBG, HOME and ESG funds be covered by the action plan, that the <u>source</u> of all such funds be clearly identified in the action plan, and that the <u>planned use</u> of all such funds for activities (and allowable contingencies) is shown in the action plan. In reviewing action plans, HUD should check that there is a balance between the sources of funds listed in the action plan and the amounts budgeted for the individual activities. A check should also be made to ensure that the amounts listed as sources match the amount of estimated funding listed in the corresponding SF-424. If there is a discrepancy between any of these figures, the grantee should be contacted immediately for clarification and correction.</i>			
<b>Expenditure Limits</b> <i>Note: A "No" response to any Expenditure Limit question is not grounds for disapproval.</i>	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee's budget exceeded the 20% administrative cap for CDBG?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee's budget exceeded the 15% public service cap for CDBG?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee's budget exceeded the 10% administrative cap for HOME?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee's budget met the 15% CHDO set-aside for HOME?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee's budget exceeded the 3% administrative cap for HOPWA or the 7% administrative cap by project sponsors under HOPWA?	<input type="checkbox"/>	<input type="checkbox"/>	
Has the grantee's budget exceeded the 7.5% administrative cap for Emergency Solutions Grant?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the amount of ESG funds budgeted for street outreach and emergency shelter activities exceed the greater of 60% of the jurisdiction's fiscal year ESG grant or the amount of FY 2010 ESG funds committed for homeless assistance activities?	<input type="checkbox"/>	<input type="checkbox"/>	

<b>AP-50: Geographic Distribution 91.220(f)</b>		
<i>For local jurisdictions, this screen is only required if geography was used to determine funding allocation priorities or if it identified one or more target areas in the Strategic Plan.</i>		
Does the plan include a description of the geographic areas of the jurisdiction (including areas of low-income and minority concentration) where assistance will be directed?	<input type="checkbox"/>	<input type="checkbox"/>
If applicable, does the grantee estimate the percentage of funds they plan to dedicate to target areas?	<input type="checkbox"/>	<input type="checkbox"/>
Does the plan provide the rationale for the priorities for allocating investment geographically?	<input type="checkbox"/>	<input type="checkbox"/>
If the grantee is requesting approval of a Neighborhood Revitalization Strategy Area, does it meet the requirements of CPD Notice 96-1 and include outcomes?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Note: Separate documentation should be maintained to verify compliance with CPD Notice 96-1. Any documents needed to seek approval of an NRSA should also be included as attachments on the AD-25 screen.</i>		
<b>AP-55: Affordable Housing Goals 91.220(g)</b>		
Does the plan specify one-year goals for the number of households to be provided affordable housing through activities that provide rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units using funds made available to the grantee, including affordable housing goals to be accomplished with CDBG-DR funding if applicable?	<input type="checkbox"/>	<input type="checkbox"/>
CDBG-DR Specific: Does the grantee specify one-year goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing units using funds made available to the grantee, including if applicable, affordable housing goals to be accomplished with CDBG-DR funding?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Note: The term affordable housing shall be as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership. These estimates should not include the provision of emergency shelter, transitional shelter, or social services.</i>		
<i>CDBG-DR Specific: The grantee must include annual goals for CDBG-DR funds; however they do not require that they include affordable housing goals in particular if the grantee does not select this as an activity.</i>		
<b>AP-60: Public Housing 91.220(h)</b>		
Does the grantee describe actions it plans to take to address the needs of public housing?	<input type="checkbox"/>	<input type="checkbox"/>
Does the plan discuss actions planned to encourage public housing residents to become more involved in management and participate in homeownership?	<input type="checkbox"/>	<input type="checkbox"/>
If the public housing agency is designated as "troubled" by HUD, does the grantee must describe the manner in which it will provide financial or other assistance to improve its operations and remove the "troubled" designation?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Note: Consult with Public and Indian Housing representative to determine whether Public Housing Authority is designated as "troubled."</i>		

<b>AP-65: Homeless &amp; Other Special Need Activities 91.220(i)</b>			
Does the grantee describe its one-year goals and specific action steps for reducing and ending homelessness through:	<input type="checkbox"/>	<input type="checkbox"/>	
a. Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs)	<input type="checkbox"/>	<input type="checkbox"/>	
b. Addressing the emergency shelter and transitional housing needs of homeless persons	<input type="checkbox"/>	<input type="checkbox"/>	
c. Helping homeless person (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again?	<input type="checkbox"/>	<input type="checkbox"/>	
d. Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals who are: <ul style="list-style-type: none"> <li>i. Being discharged from publicly funded institutions and systems of care, such as health-care facilities, mental health facilities, foster care or other youth facilities, corrections programs and institutions?</li> <li>ii. Receiving assistance from public or private agencies that address housing, health, social services, employment, education or youth needs?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
Does the grantee specify the activities it plans to undertake during the next year to address the housing and supportive service needs for persons who are not homeless but have other special needs (i.e. elderly, frail elderly, persons with disabilities (mental, physical, developmental, persons with alcohol or other drug additions), person with HIV/AIDS and their families, and public housing residents)? Also see AP 35.	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: AP-65 does not specifically call out the needs described here or in §91.215(e). Users must discuss in the discussion text box. AP-35 describes the activities for the year, including projects users plan to undertake relative to this requirement. Additional annual goal information such as numeric/quantity etc. can be seen on the AP-20 screen by clicking "view" next to each individual goal on that screen or by clicking "View Summary" below the goal table on AP-20.</i>			
<b>AP-70: HOPWA Goals 91.220(l)(3)</b>			
Does the grantee directly administer HOPWA funds? If no, AP-70 should not be included in their Con Plan template and the checklist elements in this section can be ignored.	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan describe the grantee's one-year goals for the number of households to be provided housing through the use of HOPWA for: Short-term rent, mortgage and utility assistance payments; Tenant based rental assistance; Units provided in permanent housing facilities developed, leased or operated with HOPWA funds; and Units provided in transitional short-term housing facilities developed, leased or operated with HOPWA funds?	<input type="checkbox"/>	<input type="checkbox"/>	

<b>AP-75: Barrier to Affordable Housing 91.220(j)</b>			
Does the grantee describe actions it plans to take to remove or ameliorate the negative effect of public policies that serve as barriers to affordable housing? Such policies, procedures, and processes include but are not limited to: land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment.	<input type="checkbox"/>	<input type="checkbox"/>	
<b>AP-85: Other Actions 91.220(k)</b>			
Does the plan discuss actions the grantee plans to take to address obstacles to meeting underserved needs?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss actions planned to foster and maintain affordable housing?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss actions planned to reduce lead-based paint hazards?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss actions the grantee plans to take to reduce the number of poverty-level families?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss actions the grantee plans to take to develop the institutional structure?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the plan discuss actions the grantee plans to take to enhance coordination between public and private housing and social service agencies?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: With respect to economic development, the plan should describe actions that will take place to enhance coordination with private industry, businesses, developers, and social services agencies.</i>			
<b>AP-90: Program-Specific Requirements – CDBG 91.220(l)(1)</b>			
Does the AP include a description of CDBG funds expected to be available during the program year, including the following: a) any program income that will have been received before the start of the next program year and that has not yet been programmed; b) proceeds from Section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in its strategic plan; c) surplus from urban renewal settlements; d) grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan; or e) any income from float-funded activities?	<input type="checkbox"/>	<input type="checkbox"/>	
Does the AP identify the estimated percentage of CDBG funds that will be used for activities that benefit persons of low-and moderate-income?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>AP-90: Program-Specific Requirements – HOME 91.220(l)(2)</b>			
If the grantee does not directly administer HOME funds, this section of AP-90 should not be included in their Con Plan template and the HOME checklist elements can be ignored.			
Does AP provide for engaging in forms of investment which are not described in 24 CFR 92.205?	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Note: "HUD's specific written approval to the jurisdiction is required for other forms of investment, as provided in §92.205(b). Approval of the consolidated plan or action plan under §91.500 or the failure to disapprove the consolidated plan or action plan does not satisfy the requirement for specific HUD approval for other forms of investment."</i>			
<b>AP-90: Program-Specific – HOME Resale and Recapture Provisions</b>			
<i>Note: Approval of the consolidated plan or action plan under §91.500 or the failure to disapprove the consolidated plan or action does not satisfy the requirement for specific HUD approval for resale or recapture guidelines.</i>			

A1: If the PJ proposes to use any HOME funds for assisting homebuyers (whether through down payment assistance, new construction or rehabilitation), does the Annual Action Plan include resale or recapture provisions?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>Explanation:</b> PJs must submit resale or recapture provisions to HUD for review and approval before using any HOME funds for this purpose. HUD must determine that the provisions meet the requirements established in 24 CFR 92.254(a) (5) (i) and (ii).</p> <p><b>Field Office Action:</b> If yes, continue to Question A2. If no, you must contact the PJ and ask that it submit the resale and/or recapture provisions before the end of the 45-day Annual Action Plan review period or you must inform the PJ in writing in the Annual Action Plan approval letter that it may not use any HOME funds for homebuyer assistance until it has submitted and HUD has approved the resale and/or recapture provisions to be used.</p>			
A2: If the PJ will use subrecipients, State recipients, urban county or consortium members, CHDOs or other entities to provide the homebuyer assistance, did the PJ submit the resale or recapture provisions to be used by these entities to HUD for review as part of the Annual Action Plan?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>Explanation:</b> All resale or recapture provisions to be used in a PJ's program must be reviewed and approved by HUD before the PJ can use any HOME funds for homebuyer projects using those provisions.</p> <p><b>Field Office Action:</b> If yes, proceed with your review. If no, you must contact the PJ and ask that it submit the resale and/or recapture provisions to be used by one or more of these entities before the end of the 45-day Annual Action Plan review period. If this is not possible or the PJ fails to respond or submit an acceptable revision, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale and/or recapture provisions and the entity may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale and/or recapture provisions to be used.</p>			
A3: If the PJ proposes to use more than one set of provisions (e.g., both resale and recapture, different sets of recapture provisions), does the Annual Action Plan provide an explanation of the circumstances under which each form will be used?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>Explanation:</b> For example, a PJ may use recapture provisions for its HOME down-payment assistance program, but impose resale provisions on homebuyer units newly constructed with HOME funds by its CHDO. The Annual Action Plan must explain when it will use each set of provisions.</p> <p><b>Field Office Action:</b> If yes or N/A, proceed with your review. If no, you must contact the PJ and ask that it revise its discussion of its resale and/or recapture provisions to include an explanation of the circumstances under which each set of provisions will be used before the end of the 45-day Annual Action Plan review period. If this is not possible or the PJ fails to respond or submit an acceptable revision within the review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale and/or recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale and/or recapture provisions to be used.</p>			
B1: Do the recapture provisions reflect one of the following models? 1. PJ recaptures entire amount; 2. Pro rata reduction of recapture amount during affordability period; 3. Owner recovers entire investment (down payment and capital improvements) before PJ recaptures HOME investment; 4. Shared net proceeds in event of insufficient net proceeds; 5. PJ-developed or modified provisions.	<input type="checkbox"/>	<input type="checkbox"/>	
<p><b>Explanation:</b> Recapture provisions permit the HOME-assisted homebuyer to sell their unit at any time during the period of affordability, to any willing buyer, and at the price the market will bear. The PJ imposes recapture provisions by written agreement and by recorded lien. In the event of a voluntary or involuntary sale during the period of affordability, the PJ must recapture the amount specified under its recapture provisions. The HOME regulations at 24 CFR 92.254(a)(5)(ii)(A) list four acceptable recapture models and permit PJs to adopt, develop or modify their own recapture requirements for HUD approval.</p>			

B2: Are the provisions described in adequate detail for the HUD Reviewer and interested members of the public to understand the PJ's method for recapturing funds?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> The Annual Action Plan must describe the recapture provision(s) to be used in sufficient detail for HUD and the public to understand which provisions it has chosen and how they will be implemented. Provisions that simply cite or repeat HOME regulations are not acceptable. The provisions must be described in the Annual Action Plan. Similarly, if the PJ has developed its own provisions or made modifications to the regulatory models, it must describe those provisions in sufficient detail.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its discussion of its recapture provisions to include sufficient detail to permit HUD and the public to understand the recapture requirements being adopted. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the recapture provisions to be used.</p>			
B3: Do the provisions indicate that the amount subject to recapture is the direct subsidy received by the homebuyer?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> Direct subsidy includes HOME investment that enabled the homebuyer to purchase the property. This includes down payment assistance, closing costs or other HOME assistance provided directly to the homebuyer and/or the difference between the fair market value of the property and a reduced sales price attributable to HOME development assistance. Development subsidies (i.e., the difference between the cost of producing the unit and the fair market value of the unit) cannot be subject to recapture since the homebuyer did not realize a direct benefit from these funds.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its recapture provisions to state that only direct subsidy to the homebuyer is subject to recapture. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the recapture provisions to be used.</p>			
B4: Do the provisions limit the amount to be recaptured to the net proceeds available from the sale?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The PJ must limit the amount subject to recapture to the net proceeds available from the sale. This limitation applies to all units regardless of the type of recapture provisions used or to the nature of the sale (voluntary sales including short sales, and involuntary sales including foreclosures). Any recapture provisions that do not explicitly include this limitation are unacceptable and cannot be approved.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its recapture provisions to state that its recapture provisions limit the amount to be recaptured to the net proceeds of the sale. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its recapture provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the recapture provisions to be used.</p>			
C1: Does the resale provision limit resale of the property during the HOME period of affordability only to a buyer whose family qualifies as a low-income family?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> Resale Provisions preserve the affordability and availability of the HOME-assisted homebuyer unit to low-income households for the entire period of affordability. The PJ controls the resale price by establishing an objective methodology for determining what is a fair return to the original homebuyer, in an effort to make the property affordable to a reasonable range of low-income homebuyers. If the established resale price is not affordable to the subsequent low-income homebuyer, the PJ may be required to provide additional assistance to</p>			



<p>that homebuyer – but may not adjust the resale price as a result. Resale provisions that permit resale of a HOME-assisted unit to a subsequent homebuyer who is not low-income – regardless of the circumstance – are not acceptable. Resale provisions that provide a recapture option to facilitate sale to a subsequent buyer who is not income-eligible (i.e., resale/recapture hybrids) are not acceptable.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provision to state that the housing may only be resold to a family that qualifies as low-income. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.</p>			
C2: Does the provision contain a specific definition of “fair return on investment?”		<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Explanation:</u> The provision describes in detail what return homebuyers can expect if they sell their unit during the period of affordability. The PJ is expected to identify an objective standard or index that will determine “fair return” on resale. (See C3)</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provision to include a definition of “fair return on investment.” If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used</p>			
C3: Is fair return based upon an objective index or standard?		<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Explanation:</u> An objective standard or index is concrete and publicly accessible and can be easily measured at the time of original purchase and at resale. Examples include: a percentage of the change in median sales prices over the period of ownership, the percentage change in area median income over the period of ownership, and the percentage change in the Consumer Price Index over the period of ownership. In depressed or declining markets, a loss on investment can constitute a fair return. A standard that ties the return to the original homebuyer to the price that a specific homebuyer or a defined group of low-income homebuyers are able to pay does not constitute fair return and is not acceptable.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provisions to specify the standard or index that will be applied upon resale to provide a fair return to the homebuyer. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.</p>			
C4: Does the basis upon which fair return is calculated include the homebuyer’s original investment in the property and the increase in market value attributable to homebuyer investments in or capital improvements to the property?		<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Explanation:</u> The provision must specifically state that the basis for calculating fair return is the original investment by the homebuyer and specific types of upgrades or additions that will add value to the property. (Generally, replacing worn or dated components such as appliances or carpet would not be considered an improvement that adds value). The provision must address the types of changes that it will or will not include in that basis.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise its resale provisions so that homebuyer investment includes both the homebuyer-provided down payment and homebuyer-financed improvements that would increase the value of the home. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to</p>			

<i>be used.</i>			
D1: If the PJ plans to use a presumption of affordability instead of enforcement mechanisms to meet the resale requirement, does the resale provision identify specific neighborhoods that will be subject to the presumption of affordability?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> A presumption of affordability cannot be sought or approved for an entire PJ. The presumption can only be made on a neighborhood basis.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If the presumption is not neighborhood or neighborhood(s)-specific, you must reject the presumption, and prohibit the PJ from using any HOME funds without imposing either resale or recapture requirements. The PJ may resubmit a new presumption request for HUD's approval at any time during the program year. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its resale provisions and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the resale provisions to be used.</p>			
D2: If this is a new request or renewal of a presumption issued previously, does the PJ submit a recent market analysis for each neighborhood for which approval of the presumption of affordability is sought?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> The PJ must submit a separate market analysis for each neighborhood for which it seeks approval of a presumption of affordability, except that it can perform a combined market analysis for a limited number of contiguous neighborhoods that are similarly situated with respect to demographic profile, housing market, and economic conditions. The analysis must be recent (performed within the last 12 months).</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If the PJ did not submit a market analysis, did not submit analyses for all neighborhoods, or submitted analyses that were not completed within the last 12 months, you must contact the PJ and ask that recent market analyses supporting the presumption be submitted. If the analyses are not submitted timely, you must reject the presumption, and prohibit the PJ from using any HOME funds without imposing either resale or recapture requirements. The PJ may resubmit a new presumption request for HUD's approval at any time during the program year.</p>			
D3: If the market analysis was originally submitted with a previous year's Annual Action Plan, does the Plan indicate that the PJ has determined that an updated analysis is not warranted by any changes in the neighborhood's market conditions?	<input type="checkbox"/>	<input type="checkbox"/>	
<p><u>Explanation:</u> If the PJ becomes aware that significant changes in a neighborhood's market conditions since the preparation of market analysis make continuation of the presumption of affordability inappropriate, it must indicate that in its Annual Action Plan. The PJ must indicate in the Annual Action Plan that, in the absence of significant changes, it is continuing its use of the presumption of affordability for another program year.</p> <p><u>Field Office Action:</u> If yes, proceed with your review. If no, you must contact the PJ and ask that it revise and include this information in the presumption section of its Annual Action Plan before continuing your review. If this is not possible or the PJ fails to respond or submit an acceptable revision within the 45-day review period, you must inform the PJ in the Annual Action Plan approval letter that HUD is disapproving its presumption of affordability and it may not use any HOME funds to undertake any activities related to homebuyer assistance until the PJ has submitted and HUD has approved the presumption of affordability.</p>			
D4: Does the market analysis include the following: 1. An evaluation of the location and characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area? 2. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood that supports the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing?	<input type="checkbox"/>	<input type="checkbox"/>	



<p><u><b>Explanation:</b></u> The market analysis, which can include a combined market analysis for a limited number of contiguous neighborhoods that are similarly situated with respect to demographic profile, housing market, and economic conditions, must contain this evaluation and the analysis of the data must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing.</p> <p><u><b>Field Office Action:</b></u> If yes, proceed with your review. If no, you must contact the PJ and request that an acceptable market analysis be submitted. If the analysis is not submitted timely, you must reject the presumption, and prohibit the PJ from using any HOME funds without imposing either resale or recapture requirements. The PJ may resubmit a new presumption request for HUD's approval at any time during the program year.</p>		
<p>D5: Does the information presented in the market analysis support the PJ's conclusion that the following conditions are likely to be met in the event of a resale of the HOME-assisted housing located in the neighborhood during the affordability period without the imposition of enforcement mechanisms by the PJ:</p> <ul style="list-style-type: none"> <li>the housing will be available and affordable to a reasonable range of low-income homebuyers;</li> <li>a low-income homebuyer will occupy the housing as a principal residence; and</li> <li>The original owner will be afforded a fair return on investment?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><u><b>Explanation:</b></u> The market analysis must support the conclusion that housing may be presumed to meet the resale restrictions. If the analysis is flawed or does not support this conclusion, the HUD Field Office must disapprove the presumption of affordability.</p> <p><u><b>Field Office Action:</b></u> If yes and all other requirements related to the presumption have been met, you may approve the presumption of affordability. If no, you must reject the presumption of affordability and require the use of approved resale or recapture provisions in the neighborhood(s).</p>		
Does the PJ intend to use HOME funds to refinance existing debt secured by multi-family housing which is being rehabilitated with HOME funds?	<input type="checkbox"/>	<input type="checkbox"/>
<p>If so, does the AP explain what refinancing guidelines will be used? These guidelines must describe the conditions under which the PJ will refinance existing debt. At a minimum, the guidelines must:</p> <ul style="list-style-type: none"> <li>Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.</li> <li>Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that long-term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated <ul style="list-style-type: none"> <li>a. State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.</li> <li>b. Specify the required period of affordability, whether it is a minimum 15 years or longer.</li> </ul> </li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

<p>c. Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(g) or a federally designated Empowerment Zone or Enterprise Community.</p> <p>d. State that HOME funds cannot be used to refinance multifamily loans made or insured by any federal program, including the CDBG program.</p>			
<p><i>Documentation related to the following requirements should be included with any other "Grantee Specific Appendices" under attachments on AD-25. If not attached, document where in the plan was this was described.</i></p>			
<p>If the PJ intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single family housing and does not use the HOME affordable homeownership limits for the area provided by HUD, did it determine 95 percent of the median area purchase price and set forth the information in accordance with 24 CFR 92.254(a)(2)(iii).</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Did the PJ describe eligible applicants (e.g., categories of eligible applicants), its process for soliciting and funding applications or proposals (e.g., competition, first-come first-serve) and where detailed information may be obtained (e.g., application packages are available at the office of the jurisdiction or on the jurisdiction's Web site).</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>If the PJ planned to limit the beneficiaries or give preferences to a particular segment of the low-income population, was a description of that limitation or preference described in the action plan?</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p><i>Note: Any limitation or preference must not violate nondiscrimination requirements in 24 CFR 92.350, and the participating jurisdiction must not limit or give preferences to students. A limitation or preference may include, in addition to targeting tenant- based rental assistance to persons with special needs, as provided in 24 CFR 92.209(c)(2), limiting beneficiaries or giving preferences to such professions as police officers, teachers, or artists. The PJ must not limit beneficiaries or give a preference to all employees of the jurisdiction. The PJ may permit rental housing owners to limit tenants or give a preference in accordance with 24 CFR 92.253(d) only if such limitation or preference is described in the action plan.</i></p>			
<p><b>AP-90: Program-Specific Requirements – ESG 91.220(l)(4)</b></p>			
<p>If the grantee receives ESG and funds subrecipients, this section should be completed. If the grantee does not directly receive ESG funds, this section of AP-90 should not be included in their Con Plan template and the ESG checklist elements can be ignored.</p>			
<p>Does the grantee include its written standards for providing ESG assistance? See 24 CFR 576.400(e)(1) and (e)(3) for the minimum standards.</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>If the Continuum of Care for the jurisdiction has established a centralized or coordinated assessment system that meets HUD requirements, Does the grantee describe that system? <i>Note: The requirements for using a centralized or coordinated assessment system, including the exception for victim service providers, are set forth under 24 CFR 576.400(d).</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>Does the grantee identify its process for making sub-awards and describe how the grantee intends to make its allocation available to private nonprofit organizations, including community and faith-based organizations, and in the case of urban counties, funding to participating units of local government??</p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>If the grantee is unable to meet the homeless participation requirement in 24 CFR 576.405(a), does the grantee specify its plan for reaching out to and consulting with homeless or formerly homeless individuals in considering</p>	<input type="checkbox"/>	<input type="checkbox"/>	

and making policies and decisions regarding any facilities or services that receive ESG funding?			
Does the grantee describe its performance standards for ESG activities?	<input type="checkbox"/>	<input type="checkbox"/>	
<b>AP-90: Program-Specific Requirements – HOPWA 91.220 (I)(3)</b>			
HOPW Specific: Does the action plan identify the method for selecting project sponsors (including providing full access to grassroots faith-based and other community organizations)? Note: Due to a system error, this element is omitted from the template. HOPWA grantees should therefore add a text box at the end of this screen to enter this information.	<input type="checkbox"/>	<input type="checkbox"/>	

Certifications			
<p><i>Note: Scanned copies of signed certifications can be attached in the AD-25 screen, though grantees must submit one original signed copy of the SF-424 and all certifications to HUD.</i></p>			
<p>Are the general and specific certifications for each program funded complete and accurate, where applicable:</p> <p>(a) <i>General</i></p> <ul style="list-style-type: none"> <li>a. Affirmatively furthering fair housing? (See 24 CFR 570.904)</li> <li>b. *Anti-displacement and relocation plan?</li> <li>c. Anti-lobbying? Authority of jurisdiction? Consistency with plan</li> <li>d. *Acquisition and relocation?</li> <li>e. Section 3?</li> </ul> <p><i>Note: The acquisition/relocation and the anti-displacement and relocation certifications are actually combined on the grantee's General Certification. This is the current certification available on the web for grantees. Notwithstanding the fact that they are combined under a single certification, they are still separate regulations and the checklist will identify them as two separate items.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>(b) <i>CDBG</i></p> <ul style="list-style-type: none"> <li>a) Citizen participation?</li> <li>b) Community development plan</li> <li>c) Following a current consolidated plan?</li> <li>d) Use of funds?</li> <li>e) Excessive force?</li> <li>f) Compliance with anti-discrimination laws?</li> <li>g) Compliance with lead-based paint procedures</li> <li>h) Compliance with laws?</li> </ul> <p><i>Note: The certification period for the CDBG program's overall benefit requirements must be consistent with the period certified in the prior certification</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>(c) <i>ESG</i></p> <ul style="list-style-type: none"> <li>a) Not less than 10 years – rehab?</li> <li>b) Not less than 10 years – conversion??</li> <li>c) Not less than 3 years</li> <li>d) Providing shelter or services to homeless persons during period of ESG assistance?</li> <li>e) Renovation will result in safe and sanitary buildings?</li> <li>f) Recipients will assist in obtaining permanent housing services?</li> <li>g) Match requirement?</li> <li>h) Confidentiality?</li> <li>i) Involvement of homeless individuals and families?</li> <li>j) Consistency with Con Plan?</li> <li>k) Discharge policy?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>(d) <i>HOME</i></p> <ul style="list-style-type: none"> <li>a. TBRA is consistent w/Plan?</li> <li>b. Use for eligible activities?</li> <li>c. PJ will evaluate HOME assisted projects for appropriate financial assistance? 3- or 10-year operation</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	
<p>(e) <i>HOPWA</i></p> <ul style="list-style-type: none"> <li>1) Meet urgent needs?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>	

## **HUD APPROVAL – 24 CFR 91.500(b)**

The regulations at 24 CFR 91.500(b) state that HUD may disapprove a plan or a portion of a plan for the three following reasons:

- a) If it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (NAHA);
- b) If it is substantially incomplete; or
- c) If certifications applicable to the CDBG program are not satisfactory to the Secretary in accordance with 570.304 or 570.485(c).

*Disapproval for Inconsistency with NAHA* – A plan may be disapproved if it is inconsistent with NAHA. A reviewer recommending disapproval for inconsistency with NAHA should show how the plan is inconsistent with the following purposes:

- helping families, not owning a home, to save for the down payment for the purchase of a home;.....
- retaining, where feasible, as housing affordable to low income families, those dwelling units provided for such purpose with federal assistance;
- extending and strengthening partnerships among all levels of government and the private sector, including for- and non-profit organizations, in the production and operation of housing affordable to low-and moderate-income families;
- expanding and improving federal rental assistance to very low-income families; or
- increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

**Comments:** \_\_\_\_\_  
\_\_\_\_\_

*Substantial Incompleteness* – The following are examples of consolidated plans or action plans that may be substantially incomplete:

- A plan that was developed without the required citizen participation or the required
- consultation;
- A plan that fails to satisfy all the required elements of the consolidated plan (i.e. did not meet a regulatory requirement of Part 91);
- A plan for which a certification is rejected by HUD as inaccurate after HUD inspected evidence and provided due notice, and opportunity for comment; and
- A plan that does not include a description of the manner in which the unit of general local government or state will provide financial or other assistance to a public housing agency if the public housing agency is designated as “troubled” by HUD.

**Comments:** \_\_\_\_\_  
\_\_\_\_\_

The chart below can be used to track plan status changes made during the review process:

<u>Date</u>	<u>Plan Status Changed</u> <u>From</u>	<u>Plan Status Changed</u> <u>To</u>	<u>User That</u> <u>Made the</u> <u>Change</u>	<u>Comments</u>

Based on my review of the Plan against the regulations, I have determined the Plan is:

**Approved** ☐

Date plan approved: \_\_\_\_\_

**Disapproved** ☐

Date plan disapproved: \_\_\_\_\_

**Note:** Written notification of disapproval must be communicated to the applicant in accordance with 24 CFR 91.500(c). **If disapproved**, provide documentation including dates and times on incompleteness determination, and discussions with grantee and Headquarters:

**SIGNED:**

Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

Program Manager: \_\_\_\_\_ Date: \_\_\_\_\_

CPD Director: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix J: HUD's Consolidated Annual Performance and Evaluation Report (CAPER) Checklist

# CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT COMPLETENESS CHECKLIST

Grantee: _____		Program year: _____	
Reviewed by: _____		Date: _____	
Programs covered by the report: <input type="checkbox"/> CDBG <input type="checkbox"/> HOME <input type="checkbox"/> ESG <input type="checkbox"/> HOPWA			
Date CAPER due			
Date CAPER received (see timestamp below “Status” on CR-00)			

## NOTES:

- The checklist references IDIS reports that can assist in reviewing numbers provided by grantees in their CAPER submissions. Grantees are not required to submit these reports. CPD Representatives wishing to verify numbers in CAPER submissions should download these reports from IDIS.
- Guidance for State Grantees: The PER should still be completed using the instructions in Notice CPD-11-03 ([http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/notices/cpd#2011](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/cpd#2011)). Once submitted in accordance with Notice CPD-11-03, the PER becomes available in IDIS as the PR28 and can be downloaded and reviewed. In addition to doing the PR28, the other requirements of the CAPER Regulations under 24 CFR 91.520 are met by completing the e-Con Plan CAPER template. Updates to the e-Con Plan template are pending to enable State CDBG grantees to submit their PERS through this system in the future along with the rest of the CAPER. Additionally, an update to CPR-11-03 is pending at this time. In the meantime, the guidance above should be followed.
- Throughout the template, introduction and general “narrative” text boxes are provided for readability and to allow grantees to supplement the questions on the screen, however these are not required elements of the CAPER and therefore, it is acceptable if these textboxes are left blank.
- A lot of goal information in the template is populated from goals screens in the Consolidated Plan and Annual Action Plan. Currently, the only way to change this information is to amend the appropriate plan and re-generate the CAPER, which then requires the grantee to re-enter all their data. If a CPD Representative finds the need to request that a grantee amend goal information, it may be more efficient to ask the grantee to amend the plan (which the Representative can verify in the system) and provide supplemental narrative or inserted content documenting and explaining the change, rather than requesting, what will amount to an entirely new CAPER submission. (Future updates to IDIS will make this process easier).
- Currently, the Word download of the CAPER contains several errors. We are working to correct those errors in a future update. In the meantime, the CAPER should be reviewed from the IDIS screens because the information presented in the Word download is not reliable.

## General

If the jurisdiction received any citizen comments or views on the performance report, was a summary of the comments or views included as an attachment to the report? 91.105(d)(2)

Yes ☐ No ☐ Comment \_\_\_\_\_

## CR-05 - Goals and Outcomes

91.520(a) and 91.520(i)



These tables provide a comparison of the proposed goals versus actual outcomes for each goal included in the action plan and strategic plan. Expected, Actual, and Percent Complete fields were populated with data from the action plan and accomplishment data entered at the IDIS activity level. Users can edit them if they appear incorrect.

Did the jurisdiction provide an assessment of progress in carrying out its strategic plan and action plan? 91.520(a)  
Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction provide an assessment of how the jurisdiction's use of funds, particularly CDBG, addressed the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities identified? 91.520(d)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** The jurisdiction should cite specific examples from the two tables to highlight specific accomplishments and, if applicable, explain why progress was not made toward meeting specific goals, objectives, and proposed outcomes.

**NOTE IDIS DEFECT:** If reviewing a word download of the CAPER check the CR-05 screen to ensure that the grantee has not inserted any additional content. Grantees may insert content on this screen such as supplemental narrative text boxes, tables or images. Due to a system defect these insertions do not appear in the downloaded word report.

#### **CR-10 – Racial and Ethnic composition of families assisted 91.520(a)**

The accomplishments reported in this table are read-only and cannot be edited. It is summarized from the IDIS activity accomplishment screens for the given program year for the grantee's programs. Did the jurisdiction provide the racial/ethnic data for accomplishments recorded with an accomplishment date during the Program Year in IDIS? 91.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** Accomplishments associated with ESG projects are not recorded in IDIS, so grantees will always need to enter these accomplishments manually.

#### **NOTE IDIS DEFECTS (scheduled to be remedied in December 2014):**

- In some cases, a column for HOME accomplishments may appear on this screen when the grantee is not a HOME grantee.
- Pre-populated data currently only includes accomplishments associated with Projects included in the Annual Action Plan for which the CAPER is being prepared. This will be corrected in December 2014. Grantees can create a table corresponding to the table on this screen and use data from the BOSMAC PR-03 (for CDBG) and PR-20 (for HOME) to report racial and ethnic data on this screen.

#### **CR-15 Resources and Investments 91.220, 91.320, 91.420, 91.520(a)**

##### **RESOURCES MADE AVAILABLE**

The expenditure data is generated by the system based on drawdowns completed during the program year. Users may update the values in both columns.

##### **GEOGRAPHIC DISTRIBUTION AND LOCATION OF INVESTMENTS**

This table provides a list of the target areas included in the Strategic Plan. For each target area, the system will

carry forward the planned percentage of allocation from the Action Plan. If no target areas are identified in the Strategic Plan, does the narrative discuss the geographic distribution and location of investments? 91.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

#### NARRATIVE: LEVERAGING AND MATCH

Did the jurisdiction explain how Federal funds leveraged additional resources (private, state, and local funds), including a description of how matching requirements were satisfied, as well as how any publicly owned land or property located within the jurisdiction was used to address the needs identified in the plan? 91.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

**HOME Grantees Only:** Did the jurisdiction provide the information required by the HOME Match Report HUD 40107-A HOME Annual Performance Report HUD 40107 (MBE/WBE Performance) contained on this screen?

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** This report requires grantees to identify match based on the Federal Fiscal Year, **NOT** grantees program year. Reviewers should ensure that the amount reported covers the Federal Fiscal Year immediately preceding the end of the jurisdiction's program year. For example, if the last day of a PJ's program year is March 31, 2015, the timeframe for reporting match would be October 1, 2013 through September 30, 2014. If the last day of a PJ's program year is September 30, 2015, the timeframe for reporting match would be October 1, 2014 through September 30, 2015.

#### **NOTE IDIS DEFECTS:**

- FOR NON-HOME GRANTEES – Word download of CAPER includes these sections for non-HOME grantees, but it does not appear on the screen. If you are reviewing a Word Download and this section is blank for a non-HOME grantee, ignore this section.
- FOR HOME GRANTEES –
  - Match Contribution for Federal Fiscal Year: Values in "Project No. or Other ID" field are being formatted as dates.
  - Data entered on screen in "Minority Owners of Rental Property" table is not appearing in the Word download. If you are reviewing the Word version of the plan, confirm this data on the CR-15 screen)
  - All values for "Expected Amount Available" are being populated from the "Expected Amount Available Remainder of Con Plan" in the AAP-AP-15 screen, rather than "Expected Amount Available" for the Program Year.

#### **Affordable Housing – CR-20**

**91.220(g), 91.320(g), 91.420, 91.520(b)**

#### AFFORDABLE HOUSING – NUMBER OF HOUSEHOLDS ASSISTED TABLE

This table lists the goals and actual number of affordable housing units produced in the program year for each type of population (homeless, non-homeless, special needs). The One-Year Goal field is system-generated based on the information from the Action Plan.

Did the jurisdiction provide the actual numbers in this table? 91.520(b)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** This table only includes the grantee's goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing within the program year using funds made available to the jurisdiction as specified in their Annual Action Plan on screen AP-55 – Affordable Housing. For the purpose of this section, the term “affordable housing” is defined in the HOME regulations at 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership. The numbers reported for actual should be consistent with the accomplishments reported at the Activity level in IDIS. Several reports, including the PR23 – Summary of Accomplishments, can help the jurisdiction determine the actual number of ELI, LI, and MI renter and owner households that received assistance during the program year. The grantee should be asked to revise the numbers in their Annual Action Plan, if the one-year goal field includes numbers that do not meet the definition of “affordable housing” as defined in the HOME regulations at 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership.

#### AFFORDABLE HOUSING – NUMBER OF HOUSEHOLDS SUPPORTED TABLE

This table lists the goals and actual number of affordable housing units produced in the program year for each type of housing assistance (rental assistance, production of new units, rehabilitation of existing units, and acquisition of existing units). The One-Year Goal field is system-generated based on the information from screen AP-55 – Affordable Housing in the Annual Action Plan.

Did the jurisdiction provide the actual numbers? 91.520(b)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** The numbers reported in the Actual field should be consistent with the accomplishments reported at the Activity level in IDIS. Several reports, including the PR23 – Summary of Accomplishments, can help the jurisdiction determine the actual counts for the program year.

Did the jurisdiction discuss the difference between goals and outcomes and problems encountered in meeting these goals? 92.525(i)

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction discuss how these outcomes will impact future annual Action Plans?

Yes ☐ No ☐ Comment \_\_\_\_\_

#### NUMBER OF PERSONS SERVED

This table should display the number of persons assisted at each income level who received housing assistance during the program year. The numbers reported for actual are populated by the system based on accomplishments reported at the activity level in IDIS. (Make sure the numbers populated by the system are correct. .)

Did the jurisdiction provide the actual number of households provided affordable housing? 91.520(b)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** The numbers reported in the Actual field should be consistent with the accomplishments reported at the Activity level in IDIS. Several reports, including the PR23 – Summary of Accomplishments, can help the jurisdiction determine the actual counts for the program year. Grantees can adjust these values to correct actual numbers. Compare the number of ELI, LI, MI, and homeless households provided affordable housing with narrative for the strategic plan goals summary screen SP-45 to determine progress in meeting the strategic plan goal.

#### NOTE IDIS DEFECTS:

- The system calculates accomplishments incorrectly for HOME program;
- The column for HOME accomplishments currently included for non-HOME grantees. These can be ignored until the system is corrected.
- Accomplishments should be persons served with affordable housing assistance.

Did the jurisdiction provide an additional narrative regarding the information provided by these tables?

Yes ☐ No ☐ N/A ☐ Comment \_\_\_\_\_

#### CR-25 – Homeless and Other Special Needs

**91.220(i), 91.320(h), 91.420, 91.520(c)**

Does the report evaluate of the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

- 1) Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs 91.520(c)(1)  
Yes ☐ No ☐ Comment \_\_\_\_\_
- 2) Addressing the emergency shelter and transitional housing needs of homeless persons 91.520(c)(2)  
Yes ☐ No ☐ Comment \_\_\_\_\_
- 3) Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families who are:
  - a. Likely to become homeless after being discharged from publicly funded institutions and systems of care (such as health-care facilities, mental health facilities, foster care and other youth facilities and corrections programs and institutions) 91.520(c)(4)(i)  
Yes ☐ No ☐ Comment \_\_\_\_\_
  - b. Receiving assistance from public or private agencies that address housing, health, social services, employment, education or youth needs? 91.520(c)(4)(ii)  
Yes ☐ No ☐ Comment \_\_\_\_\_
- 4) Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again? 91.520(c)(3)  
Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE IDIS DEFECT:** If reviewing a word download of the CAPER check the CR-05 screen to ensure that the grantee has not inserted any additional content. Grantees may insert content on this screen such as supplemental narrative text boxes, tables or images. Due to a system defect these insertions made under the first two text boxes on this screen do not appear in the downloaded word report.

**CR-30 – Public Housing****24 CFR 91.220(h), 91.320(j), 91.420, 91.520(a)**

Did the jurisdiction identify actions taken to address the needs of public housing? 91.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction identify actions taken to encourage public housing residents to become more involved in management and participate in homeownership? 91.520(a) Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction identify actions taken to provide assistance to troubled PHAs? 91.520(a)

Yes ☐ No ☐ N/A ☐ Comment \_\_\_\_\_

**NOTE IDIS DEFECT:** If reviewing a word download of the CAPER check the CR-05 screen to ensure that the grantee has not inserted any additional content. Grantees may insert content on this screen such as supplemental narrative text boxes, tables or images. Due to a system defect these insertions made under the first two text boxes on this screen do not appear in the downloaded word report.

**CR-35 Other Actions****91.220(j, k), 91.320 (i, j), 91.420, 91.520(a)**

Did the jurisdiction describe actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. 91.220(j); 91.320(i)

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction identify actions taken to:

Address obstacles to meeting underserved needs? 91.220(k); 91.320(j) Yes ☐ No ☐

Reduce lead-based paint hazards? 91.220(k); 91.320(j) Yes ☐ No ☐

**NOTE IDIS Defect:** The labels for the second text box is incorrectly repeated as the label for the 3<sup>rd</sup> text box. The third text box should contain a description of actions taken to reduce lead-based paint hazards. (The text boxes are correctly labeled in the word download)

Reduce the number of poverty-level families? 91.220(k); 91.320(j) Yes ☐ No ☐

Develop institutional structure? 91.220(k); 91.320(j) Yes ☐ No ☐

Enhance coordination between public and private housing and social service agencies? 91.220(k); 91.320(j)  
Yes ☐ No ☐

Overcome the effects of any impediments identified in the jurisdiction's analysis of impediments to fair housing choice. 91.520(a) Yes ☐ No ☐

**NOTE:** The jurisdiction must describe specific actions taken to affirmatively further fair housing.

Comment \_\_\_\_\_

**NOTE IDIS DEFECTS:**

- If reviewing a word download of the CAPER check the CR-05 screen to ensure that the grantee has not inserted any additional content. Grantees may insert content on this screen such as supplemental narrative text boxes, tables or images. Due to a system defect these insertions made under the first six text boxes on this screen do not appear in the downloaded word report.

**Monitoring – CR-40****91.230, 91.330, 91.430**

Did the jurisdiction describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction describe efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports? 91.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** A jurisdiction must make the report available to the public for examination and comment for a period of at least 15 days, include a review of program performance at public hearings, and must consider any comments or views of citizens received in writing, or orally at public hearings in preparing the performance report. (91.105) A jurisdiction is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities. 91.105(a)(2)

**NOTE IDIS DEFECT:** If reviewing a word download of the CAPER check the CR-05 screen to ensure that the grantee has not inserted any additional content. Grantees may insert content on this screen such as supplemental narrative text boxes, tables or images. Due to a system defect these insertions made under the first text box on this screen do not appear in the downloaded word report.

### **CR- 45 – CDBG (CDBG grantees only)**

#### **91.520(d)**

Did the jurisdiction specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences? 91.520(d)

Yes ☐ No ☐ Comment \_\_\_\_\_

Does this jurisdiction have any open Brownfields Economic Development Initiative (BEDI) grants?

Yes ☐ No ☐ Comment \_\_\_\_\_

If you answer yes to the BEDI question above, did the jurisdiction describe grant accomplishments and program outcomes during the last year.

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** BEDI grantees should describe program accomplishments and outcomes following instructions for Section 108 reporting contained in Chapters 8 and 9 of the IDIS Online for CDBG Entitlement Communities Training Manual at:

<https://www.onecpd.info/resource/2685/idis-online-for-cdbg-entitlement-communities-training-manual/> . Review IDIS PR03 Report to determine extent to which extremely low-income, low-income, and moderate-income served by each activity where information on income by family is required to determine the eligibility of the activity. 91.520(d)

### **CR-50 – HOME (HOME grantees only)**

#### **91.520(e)**

Did the jurisdiction include the results of on-site inspections of affordable rental housing assisted under the program to determine compliance with housing codes and other applicable regulations, including:

A list of projects that should have been inspected on-site this program year based upon the schedule in §92.504(d)?

Yes ☐ No ☐ Comment \_\_\_\_\_

An indication of which of these were inspected and a summary of issues that were detected during the inspection?

Yes ☐ No ☐ Comment \_\_\_\_\_

A description of how it will remedy the situation for those properties that were not inspected?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction provide an assessment of the jurisdiction's affirmative marketing actions for HOME units? 92.351(b)

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction provide data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction describe other actions taken to foster and maintain affordable housing? 91.220(k); 91.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** This is not limited to the HOME program.

**STATES ONLY:** Did the state include the coordination of LIHTC with the development of affordable housing? 91.320(j); 92.520(a)

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** This is not limited to the HOME program.

**NOTE IDIS DEFECT:** If reviewing a word download of the CAPER check the CR-05 screen to ensure that the grantee has not inserted any additional content. Grantees may insert content on this screen such as supplemental narrative text boxes, tables or images. Due to a system defect these insertions made under the first and third text boxes on this screen do not appear in the downloaded word report.

#### **CR-55 – HOPWA (HOPWA grantees only)**

##### **91.520(f)**

This table lists the one-year goals and actual number of households receiving HOPWA assistance for each eligible type of housing assistance. The One-Year Goal field is system-generated based on the information from screen AP-70 – HOPWA Goals in the Action Plan. Did the jurisdiction provide the actual numbers?

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** The numbers reports for actual should be consistent with the accomplishments reported in the jurisdiction's HOPWA CAPER.

**NOTE IDIS DEFECT:** CPD Representatives should review this table in IDIS. When values are entered into the table on this screen, the word download repeats every row 16 times and the "Totals" row is missing.

#### **CR-60 ESG (ESG grantees only) (PAPER COPY – if full CAPER not submitted in IDIS)**

##### **91.520(g)**

Did the jurisdiction complete all the required ESG recipient and subrecipient information?

Yes ☐ No ☐ Comment \_\_\_\_\_

NOTE: the grantee information referenced in sections 1 and 2 on this screen should be automatically populated in the word download of the CAPER with the information from the Grantee/PJ profile. CPD Representatives can confirm this information in each grantee's profile.

#### **ESG Persons Assisted – CR - 65 (ESG grantees only) (PAPER COPY – if not full CAPER submitted in IDIS)**

##### **91.520(g)**

Did the jurisdiction complete all the required household information for persons served, including number of persons in households for:

Prevention Activities?

Yes ☐ No ☐ Comment \_\_\_\_\_

Rapid Re-Housing Activities:

Yes ☐ No ☐ Comment \_\_\_\_\_

Shelter?

Yes ☐ No ☐ Comment \_\_\_\_\_

Street Outreach?

Yes ☐ No ☐ Comment \_\_\_\_\_

Total for all persons in households served with ESG?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction complete all the required gender information?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction complete all the required age information?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction complete all the required special needs populations served information?

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE IDIS DEFECT:** CPD Representatives should review this table in IDIS. Columns in the word version of Table 7 on this screen are mislabeled.

**CR-70 – ESG Assistance Provided (ESG grantees only) (PAPER COPY – if not full CAPER submitted in IDIS)  
91.520(g)**

Did the jurisdiction report on shelter utilization rates for ESG expenditures?

Yes ☐ No ☐ Comment \_\_\_\_\_

Did the jurisdiction report on project outcomes data?

Yes ☐ No ☐ Comment \_\_\_\_\_

**CR-75 ESG Expenditures – (ESG grantees only) (PAPER COPY – if not full CAPER submitted in IDIS)  
91.520(g)**

Did the jurisdiction report the dollar amount from each of the three most recent fiscal year allocations that was expended during the recipient's program year for each ESG component, as well as match sources?

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE IDIS Defects:**

- The years populate correctly on the screen but they are incorrect on the word report.
- CPD Representatives should review this screen in IDIS.
  - Totals in Tables 11e and 11g currently exclude "Street Outreach" expenditures from Table 11d in



- the Word download.
- In Tables 11a through 11g, column headings are correct on the screen but they are displayed incorrectly the incorrect years in the Word download.

**CONCLUSION AND RECOMMENDATION:**

Based on my review of this report, in accordance with all applicable regulations, I find this report to be

- ☐ satisfactory  
☐ unsatisfactory

Comments: Type comments here.

**SIGNED:**

Reviewer: \_\_\_\_\_ Date: \_\_\_\_\_

Program Manager: \_\_\_\_\_ Date: \_\_\_\_\_

CPD Director: \_\_\_\_\_ Date: \_\_\_\_\_

The following can be reviewed as part of the overall CAPER review. However, these items are not regulatory and a deficiency in any area does not affect the determination as to whether or not the CAPER is satisfactory.

A review of the following will assist the CPD Representative determine compliance with certain regulatory provisions and can be assessed as part of the Annual Community Assessment.

**CDBG Grantees Only:** Did the jurisdiction include the Financial Summary Report (PR26)?

Yes ☐ No ☐ Comment \_\_\_\_\_

**CDBG Grantees Only:** Was the 70% low/mod overall spending requirement for CDBG met?

Yes ☐ No ☐ Comment \_\_\_\_\_

**NOTE:** If this is a multi-year certification, please specify the period covered.

### **Expenditure Limits**

Has the grantee exceeded the 20% administrative cap for CDBG?

Yes ☐ No ☐

Has the grantee exceeded the 15% public service cap for CDBG?

Yes ☐ No ☐

Has the grantee exceeded the 10% administrative cap for HOME?

Yes ☐ No ☐

Has the grantee met the 15% CHDO set-aside for HOME?

Yes ☐ No ☐

Has the grantee exceeded the 3% administrative cap for HOPWA or the 7% administrative cap by project sponsors under HOPWA?

Yes ☐ No ☐

Has the grantee exceeded the 7.5% administrative cap for Emergency Solutions Grant?

Yes ☐ No ☐

Does the amount of ESG funds for street outreach and emergency shelter activities exceed the greater of 60% of the jurisdiction's fiscal year ESG grant or the amount of FY 2010 ESG funds committed for homeless assistance activities?

Yes ☐ No ☐

Did the jurisdiction describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements?

Yes ☐ No ☐ Comment \_\_\_\_\_

## Appendix K: Annual Plan Checklist

Annual Plan Checklist<sup>1</sup>

Name of Housing Authority: \_\_\_\_\_

Program Type: Combined / Public Housing Only / Section 8 Only

# of Public Housing Units: \_\_\_\_\_

# of Section 8 Vouchers: \_\_\_\_\_

HA Code: \_\_\_\_\_ End of Fiscal Year: \_\_\_\_\_ Designation: (Circle One)  
 Standard / High Performer / Troubled / At risk  
 Other: \_\_\_\_\_

RAD program? \_\_\_\_\_

**Mandatory Element Assessment:**

Page #

- \_\_\_\_\_ a. Housing needs
- \_\_\_\_\_ b. Eligibility, selection and admission policies, including deconcentration policies (public housing only) and waiting list procedures (including steps to affirmatively further fair housing)
- \_\_\_\_\_ c. Financial resources
- \_\_\_\_\_ d. Rent determination policies
- \_\_\_\_\_ e. Operation and management

<sup>1</sup> 24 C.F.R. §903.7 describes each element in detail.

- \_\_\_\_\_ f. Procedures for:
  - \_\_\_\_\_ Grievances by public housing tenants
  - \_\_\_\_\_ Hearings for admission determinations to public housing
  - \_\_\_\_\_ Hearings for selection and termination of voucher participants
- \_\_\_\_\_ g. Capital improvements plans
- \_\_\_\_\_ h. Plans for demolition and/or disposition of public housing. (*See also* discussion in Section 10 about demolition and disposition of public housing.)
- \_\_\_\_\_ i. Plans to designate developments as housing for elderly families and/or families with disabilities. (*See also* Chapter 12, Section III(C).)
- \_\_\_\_\_ j. Plans for conversion of public housing to tenant based assistance
- \_\_\_\_\_ k. Home ownership programs
- \_\_\_\_\_ l. Community service and self-sufficiency programs
- \_\_\_\_\_ m. Safety and crime prevention measures
- \_\_\_\_\_ n. Policies regarding pet ownership in public housing
- \_\_\_\_\_ o. Certification regarding compliance with civil rights obligations (including goals identified in Assessment of Fair Housing)
- \_\_\_\_\_ p. Results of the fiscal year audit
- \_\_\_\_\_ q. Asset management information
- \_\_\_\_\_ r. Additional information, including a brief statement of the progress in meeting mission and goals of Five Year Plan

Appendix L:      Sample Comment Letter on  
Administrative Plan and Admissions  
and Continued Occupancy Policy



# BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

Alex R. Gulotta  
Executive Director

July 5, 2016

Linda Martin-Mason, Director of Government Affairs and Policy  
San Francisco Housing Authority  
1815 Egbert Avenue  
San Francisco, CA 94124

Re: Response to invitation for public comments for SFHA 2016 Annual Plan process

Dear Ms. Martin-Mason:

In response to the invitation for comments, Bay Area Legal Aid, the Housing Rights Committee of San Francisco, and the National Housing Law Project jointly submit the attached comments.

Thank you very much for considering these comments. If you have any questions, please feel free to contact Lauren DeMartini at (415) 982-1300, ext. 6356.

Sincerely,

(s/)

Jessica Cassella, Ralph Abascal Fellow / Staff Attorney  
National Housing Law Project

Lauren DeMartini, Staff Attorney  
Bay Area Legal Aid

Linda Galbreth, Staff Attorney  
Bay Area Legal Aid

Lauren Lofton, Public Housing Advocate  
Housing Rights Committee of San Francisco

## **GENERAL COMMENTS**

*SFHA should add the following language to every instance where the ACOP and Admin Plan reference arrests and/or convictions: “Pursuant to the Fair Housing Act and Notice PIH 2015-19, SFHA will never use arrest records or police reports as the sole basis for denying admission, terminating assistance, or evicting tenants from public or other federally subsidized housing. Additionally, SFHA will not impose a blanket prohibition on any person with any conviction record and will take into account the nature, severity, and recency of an individual's criminal conduct.”*

*This language is supported by HUD's recent fair housing guidance, entitled [HUD Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions](#), and is critically important to clarify that police reports or arrest records alone will not be enough to deny or terminate assistance in SFHA properties. It is also essential that SFHA act in accordance with HUD guidance and clarify what evidence of criminal activity is considered “credible” or what will be permissible “supporting documentation.”*

## **SFHA ADMINISTRATIVE PLAN**

### **GENERAL COMMENTS ON ADMINISTRATIVE PLAN**

*The title of this plan, currently the “Housing Choice Voucher Program Administrative Plan,” should be changed to reflect the fact that the plan includes information on subsidy programs other than just the HCV program (i.e. the Project-Based Voucher (PBV) program). Housing authorities like the Oakland Housing Authority have simply entitled their plan “Administrative Plan.”*

*SFHA should also clarify the relationship between Chapter 17 (Project-Based Vouchers) and Chapter 18 (Rental Assistance Demonstration). There are some provisions in Chapter 17 and elsewhere in the Admin Plan that will apply to RAD PBV families. SFHA should consider including throughout Chapter 18 references to other chapters in the Administrative Plan that apply to RAD PBV families. Alternatively, SFHA should mention at least at the beginning of Chapter 18 that other chapters of the Administrative Plan apply to RAD PBV families (and list out which chapters).*



## **CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY**

### **2-II.D. Verification of Disability**

*Where the initial reasonable accommodation paperwork includes appropriate verification that there is a permanent need for the accommodation, or where said need remains obvious to SFHA staff, the household member should not be required to resubmit additional verification. In addition, there is a common problem of submitted paperwork not being properly retained in the file. Where it is evident that the household submitted paperwork and said paperwork has been lost or misplaced by SFHA, the burden should not be on the household member to resubmit.*

### **2-II.E. Approval/Denial of a Requested Accommodation**

*Consistent with applicable law, e.g., the HUD/DOJ joint statement on reasonable accommodation, the language should reflect a requirement that the SFHA engage in the interactive process, i.e., change "may" to "must."*

## **CHAPTER 3: ELIGIBILITY**

### **3-I.B. Family and Household**

*Given the difficulty of finding housing in San Francisco, it would better reflect the housing needs of the local community to leave the age cutoff for returning adult children at 26, rather than change it to 24.*

### **3-I.M. Live-In Aid**

#### **Addition of a Live-In Aid**

*Where the initial reasonable accommodation paperwork includes appropriate verification that there is a permanent need for the accommodation, or where said need remains obvious to SFHA staff, the household member should not be required to resubmit additional verification.*

*The requirement that a disabled family submit a new written request for a live-in aid in cases involving permanent or long-term disability is unduly burdensome, unnecessary for program administration, and jeopardizes a disabled tenant's housing stability.*

*A reasonable accommodation request is a multi-step process and requires supporting documentation from a medical provider. Some providers require an appointment before producing such a letter. Having to schedule and attend an additional medical appointment costs the family time and money they would not otherwise spend. SFHA also requires verification directly from the medical provider. This delays the reexamination process, increases the chance of the family not being able to comply because the verification will not be timely completed by the medical provider or timely received or processed by SFHA.*

*Additionally, many families are not aware of this requirement, often due to their disability or LEP status. As a result, they do not re-apply for a live-in aid and their voucher size is reduced on the mistaken assumption that the live-in aid is no longer necessary. It often takes months to reinstate the live-in aid and correct the voucher size through administrative hearings. During this process, the tenant's share of the rent may increase to an unaffordable level, putting the participant family in danger of eviction for nonpayment of rent. This practice jeopardizes the stability of the disabled tenant's housing. This practice also interrupts payments to the landlord and creates an administrative burden on SFHA to have to correct the voucher size and make retroactive payments to the landlord.*

*To reduce the burden on SFHA and the participant household, the participant should only be required to apply for a live-in aid when the need for the live-in aid first arises. We request that SFHA remove the requirement that a participant family re-submit a new request for a live-in aid and find a less burdensome way to verify the continued need for a live-in aid.*

#### Denial of a Live-In Aide

*An individual should not be barred from serving as a live-in aide where they owe a debt to the SFHA, as said debt does not reflect on their qualification to serve as a live-in aide. In addition, the benefit of housing accrues to the family, and only incidentally to the live-in aide, who has no tenancy rights and is required to work for their keep in the household. In the alternative, if old debt is to be counted, it should be limited to 3 years as it would be for the household.*

*The constraint on live-in aide should be limited to exclude a person who would "not be living in the unit except to provide the necessary supportive services." 24 CFR 5.403. The Admin Plan language should not be expanded, as proposed, to include any person who is "the owner of the unit, lives in the unit or has an interest in the subsidized unit."*

## **CHAPTER 5: BRIEFINGS AND VOUCHER ISSUANCE**

### **5-II.B. Determining Family Unit (Voucher) Size**

*Families of 2 should be permitted but not required to accept a studio-size voucher. The proposed change would permit the SFHA to require a family of two persons to reside in a studio. Housing is already prohibitively difficult to find in San Francisco, and reducing voucher-size to families will compound the existing problem of payment standards being too low to reflect actual market level rents. This problem regularly results in families losing vouchers or porting out of San Francisco.*

#### *Living rooms should not be counted as bedrooms.*

*We request that the Administrative Plan be clarified to make explicit that the SFHA will not count living rooms as bedrooms in making voucher size determinations. This is consistent with guidance from HUD, which in a memorandum from HUD's Office of General Counsel clearly states:*

“A key principal of subsidy standards is that the voucher is always tied to the number of bedrooms needed by the family. There are no HCV statutory, regulatory or administrative authority that considers a living room a ‘bedroom.’” Memorandum from Chung-yiu “Andrew” Lee, Office of General Counsel, Assisted Housing Division, to Laure Rawson, Office of Public and Indian Housing, Office of Voucher Management Operations (June 25, 2013).

*The memorandum from General Counsel goes on to state, “[u]nder no circumstances may a PHA compel a family to have its family member(s) reside in a living room or accept fewer bedrooms than what the family needs.”*

*Members of different generations should not be required to share bedrooms.*

*Language should be added to the Administrative Plan to require that, in making voucher size determinations, the SFHA will not force members of different generations to share bedrooms. It is widely recognized that public housing residents should not be forced to room members of different generations in the same bedroom. In line with this, the SFHA Admissions and Continued Occupancy Policy for Public Housing establishes that “persons of different generations will not be required to share a bedroom.” The rationale underlying this SFHA public housing policy applies equally well to individuals in the voucher program, and should inform SFHA voucher-size determinations under the Voucher Program.*

*Children of opposite gender identification should not be required to share a bedroom.*

*The SFHA policy providing that children of the opposite sex, other than those under five (5) years old, may not be required to occupy the same bedroom should be expanded to include children of opposite gender identification, rather than acknowledging only an assigned at-birth sex designation.*

## **5-II.E. Voucher Term, Extensions, and Suspensions**

*The proposed language to increase the voucher term reflects a much needed change for program participants in San Francisco. We strongly support this change.*

## **CHAPTER 6: INCOME AND SUBSIDY DETERMINATIONS**

### **6-I.E. Earned Income Disallowance for Persons with Disabilities**

*Because the new language reflects two different sets of requirements depending on the applicable date, the revised version should include both the Original Calculation Method and the Revised Calculation Method.*

### **6-III.D. Applying Utility Allowances**

*If there is a possibility that the utility allowance will be decreased at the contract anniversary, any new payment standard should be applied at the same time, such that the household gets the benefit of the higher payment standard.*

## **CHAPTER 7: VERIFICATION**

### **7-III.B. Sporadic, Seasonal, and Temporary Income**

*Per 24 C.F.R. 5.609(c)(9) temporary or sporadic income is not included in annual income because it is not predictable or reliable. Chapter 6 of the SFHA Admin Plan acknowledges this. For the same reason, it is problematic to use past year IRS tax return to project forward where such income is not predictable or included. This proposed language providing for this method of verification should be stricken.*

## **CHAPTER 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS**

### **8-I.C. Life Threatening Conditions**

*Although we recognize that under RAD, HUD requires that all units meet HQS no later than the date of the completion of initial repairs as indicated in the RAD Conversion Commitment, SFHA should require developers to comply with current code requirements and HQS as soon as possible, and should provide automatic rent abatement for tenants who are living in substandard and unsafe conditions that are in violation of HQS and/or local/state housing laws. SFHA should also clarify that for existing buildings converting to RAD that will be rehabilitated, existing non-conforming building conditions are not required to be upgraded to comply with current code only at the time of RAD conversion. After the RAD rehabilitation has been completed, these building will be required to comply with HQS and current code.*

### **8-II.C. Annual/Biennial HQS Inspections**

*If a particular unit or building has a negative inspection history, an annual inspection of the unit itself should be required and a sampling-based inspection method should not be used. The proposed language seems to permit owners to be present in place of tenants. This seems like a fine change where the tenant is in agreement, however, it should be made clear in the proposed language that an owner is still required to adhere to the requirements of Cal. Civil Code 1954 regarding landlord entry to a unit, by providing proper notice. In addition, the failure of an owner to be present after committing to be present should in no case be attributed to the tenant as a missed inspection appointment.*

### **8-III.B. When Rent Reasonableness Determinations Are Required**

*Any new payment standard should be applied whenever the household rent is increased owing to a landlord request for rent increase, even if it would otherwise not be applied until a later date.*

*Attachment A and the redlined HCV with proposed changes says that a unit must have passed inspection in the 12 months prior to an owner rent increase. The grid summarizing changes says 24 months. 12 months is an appropriate period, and any proposed change should reflect the shorter window.*

### **8-III.D. SFHA Rent Reasonableness Methodology**

*Given rapid changes in the rental market, data that is not current (i.e., originating within the past 24 months), may not be a reasonable basis for approving a rent increase under the rent reasonableness policy. Thus the requirement that comps be drawn from recent data should be retained.*

## **CHAPTER 10: MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY**

### **10-II.B Initial PHA Role**

If the family owes money to the SFHA, they will not be allowed to port out to another jurisdiction until the debt is repaid.

*Under 24 CFR 982.552 and Notice PIH 2011-3, SFHA has the discretion to allow families to port out to another jurisdiction "[i]f the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act." As such, we strongly believe that SFHA should not place such a restricting limitation on families who seek to live in more affordable communities. If families who owe debt to the SFHA are barred from porting out, they will often be less able to repay the SFHA because of the staggering rent levels in San Francisco. By allowing these families to port to more affordable areas, they will more likely be able to repay debts. In addition, because San Francisco is so unaffordable, families who do not have an option to leave (some of whom will have been forced out due to no-fault evictions by landlords so common in San Francisco) will find themselves homeless if they cannot port out of San Francisco.*

*Alternatively, if there is a significant amount of collectable debt owed to SFHA by tenants who wish to exercise their portability rights, SFHA should instead utilize repayment agreements as the tool to recover any collectable debt, and should not otherwise restrict families who wish to exercise their portability rights. In other words, SFHA should not prevent families from porting out if they have entered into repayment agreements with SFHA for any current and collectible debt owed.*

## **CHAPTER 11: REEXAMINATIONS**

### **11-II.D Processing the Interim Reexamination**

*We strongly urge SFHA to keep the original language that provides an earlier effective date for decreases in tenant rent. There is a clear policy reason for setting a faster timeline for implementing tenant rent decreases. For tenants living on limited resources, a decrease in their household income could make it impossible to afford their previous rent portion for an*

*additional thirty days. The proposed language change risks putting tenants in the precarious position of not paying unaffordable rent and facing eviction, or forgoing basic life necessities in order to preserve stable housing.*

*It is not reasonable or fair that households should lose a retroactive benefit in instances where SFHA delay or other persons outside the control of a household results in slow verification. In addition, the following sentence should not be deleted: "In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively."*

## **CHAPTER 13: OWNERS**

### **13-II.E. HAP Contract Term and Terminations**

*It is dangerous and inappropriate to require tenants to behave in a "professional" manner towards PHA staff. This term is ambiguous and is not the appropriate standard outside of a limited set of workplace environments. A quick review of common dictionary definitions of the word supports that this is not a reasonable ground for termination of a basic housing benefit.*

## **CHAPTER 18: RENTAL ASSISTANCE DEMONSTRATION**

In order to help educate RAD tenants about the important, tenant-supportive policies and procedures that have been created through various San Francisco RAD Working Groups, the final versions of these policies and procedures should be hyperlinked to the SFHA Administrative Plan in the corresponding sections. These policies and procedures were negotiated with a wide variety of stakeholders, including SFHA, MOHCD, RAD developers and tenant advocates, and include the following documents: RAD Emergency Referral Policy (should be included in full in the Administrative Plan), RAD Applicant Referral Procedure (should be hyperlinked on page 621 of the Administrative Plan), RAD Tenant Selection Guidelines (should be hyperlinked on page 615 of the Administrative Plan), and RAD Relocation and Transition Plan should be hyperlinked on page 103 of the Administrative Plan).

### **No Re-screening of Tenants Upon Conversion (p. 566)**

SFHA should clarify what the following sentence means: “The SFHA will make their best effort to appropriately size households throughout the conversion.” What is the SFHA’s responsibility versus the owner’s responsibility to appropriately size households? What does the term “throughout conversion” mean? Does this mean before closing and/or after closing during rehabilitation of the units?

### **Renewal of Lease (p. 566)**

SFHA should clarify that the *owner* is obligated to renew all leases upon lease expiration. Currently, this section states that the “PHA must renew all leases upon lease expiration.” After a RAD conversion, the lease is between the owner and tenant, not SFHA and tenant.

### **Resident’s Procedural Rights (p. 568)**

SFHA should clarify that the *owner* is obligated to provide adequate written notice of termination of the lease. Currently, this section states that the “termination procedure for RAD conversions will require that PHA’s provide adequate written notice of termination of the lease.” After a RAD conversion, the notice of lease termination obligations identified in this section are the owner’s obligations, not SHFA’s obligations.

### **Choice Mobility Vouchers (p. 569)**

SFHA should add the following clarifying language to the second paragraph of this section:

“This means that SFHA will not place a limit on the number of vouchers or other comparable tenant-based rental assistance given to RAD PBV families after one year of occupancy at a RAD PBV property.”

SFHA should also clarify how the joint RAD PBV and non-RAD PBV choice mobility waiting list will be prioritized (will RAD PBV families receive preferences over non-RAD PBV families on the waiting list?) and how RAD PBV families will be able to obtain their tenant-based voucher or get on the waiting list. SFHA should update the “HCV Priorities Chart” with this information.

#### **Definitions of Family and Household Members: Guests (p. 577, 589)**

The guest policy should be updated to reflect the guest policy language in the RAD House Rules. Currently, there is different, conflicting language between the relevant section of the RAD House Rules and this section. For example, the guest maximum stay should include an exception for situations where the RAD Property Manager has provided written permission and this section does not include VAWA exceptions for when residents are held responsible for the conduct and actions of their guests.

#### **Denial of a Live-In Aide (p. 580)**

SFHA should clarify that the only circumstances in which the SFHA will remove a particular person as a live-in aide is if the tenant determines that the person is no longer necessary for their own care or if SFHA does not receive the necessary paperwork for the live-in aide.

Also, SFHA should not deny a live-in aide, who is essential to the care of a tenant, if the proposed live-in aide owes rent or other amounts to the SFHA or to another PHA in connection with the Housing Choice Voucher Program, RAD, or Conventional Public Housing Program under the 1937 Act. The live-in aide’s debt to the SFHA or another PHA has no bearing on their fitness as a live-in aide or the tenant’s need for their critical care. Additionally, the live-in aide does not pay rent, so past debts owed are not needed to determine the likelihood that the live-in aide will regularly pay rent or other charges as necessary.

#### **Denial of Assistance (p. 588-599)**

This section should more clearly distinguish between when it is referring to a termination of assistance of a current tenant or initial denial of assistance to an applicant.

#### **Previous Behavior in Assisted Housing (p. 592)**

Pursuant to the discretion allowed by 24 CFR 982.552, SFHA should remove the following events from the paragraph entitled “The SFHA will terminate a family's assistance.” SFHA should not terminate a family's assistance under the following circumstances because they are not relevant to the family's current tenancy:

- Any family member has been evicted from federally assisted housing in the last five years.



- Any PHA has ever terminated assistance under the program for any member of the family

Also, SFHA should not terminate a family's assistance under the following events because they may not be relevant to the family's current tenancy:

- The family has breached the terms of a repayment agreement entered into with the SFHA more than one time in any 12-month period.
- The family refuses to enter into a repayment agreement with the SFHA for past debt owed.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation, or other public housing programs.

SFHA should move all of these circumstances to the paragraph in the same subsection entitled "The SFHA will not terminate a family's assistance..." because these circumstances do not reflect circumstances surrounding the current tenancy, and such language does not support the critical housing retention goals of the SFHA program.

**Other Permitted Reasons for Denial of Assistance: Previous Behavior in Assisted Housing (pp. 592-593)**

Pursuant to the discretion allowed by 24 C.F.R. 982.552, SFHA should remove the following events from the paragraph entitled "The SFHA will terminate a family's assistance." SFHA should not terminate a family's assistance under the following circumstances because they are not relevant to the family's current tenancy:

- Any family member has been evicted from federally assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.

Also, SFHA should not terminate a family's assistance under the following events because they may not be relevant to the family's current tenancy:

- The family has breached the terms of a repayment agreement entered into with the SFHA more than one time in any 12-month period.
- The family refuses to enter into a repayment agreement with the SFHA for past debt owed.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation, or other public housing programs.

SFHA should move all of these circumstances to the paragraph in the same subsection entitled "The SFHA will not terminate a family's assistance..." because these circumstances do not

reflect circumstances surrounding the current tenancy, and such language does not support the critical housing retention goals of the SFHA program.

SFHA should also clarify that it will not terminate the assistance of a household that converted from public housing to RAD if the household breaches a repayment agreement with SFHA, refuses to enter into a repayment agreement with SFHA, or currently owes rent or other amounts to any PHA.

#### **RAD Assistance Eligibility (p. 593)**

The beginning of this section should briefly describe that there is a two-step screening process under RAD, where SFHA will only screen for subsidy eligibility and the RAD Property Managers will screen for certain additional tenant selection criteria. The final version of the RAD Tenant Selection Guidelines and RAD Applicant Referral Procedure, negotiated and finalized by the RAD Waiting Lists and Referrals Working Group, should be linked in this subsection in order to both illustrate and educate applicants about this dual screening process.

#### **RAD Applications Process (p. 609)**

This section should be rewritten to describe the two-step screening process under RAD, where SFHA will only screen for subsidy eligibility and the RAD Property Managers will screen for certain (limited) additional tenant selection criteria. The final version of the RAD Tenant Selection Guidelines, negotiated and finalized by the RAD Waiting Lists and Referrals Working Group, should be attached or incorporated in this section in order to both illustrate and educate applicants about this dual screening process.

#### **Organization of the Waiting List (p. 611)**

SFHA should provide more information in this subsection about how applicants can learn more about and apply for the RAD site-based waiting lists. Will the applications be via the online Applicant Portal (which is not currently operational)? Where will there be more information for applicants to learn more about each of the RAD properties when applying for the site-based waiting lists?

#### **Removal from the Waiting List (p. 614)**

Tenants who are awaiting an emergency referral should not be automatically removed from other RAD site-based waiting lists.

#### **RAD Emergency Referral Policy for In-Place Residents (p. 623)**

We strongly support the RAD Emergency Referral policy that was negotiated with various representatives on the RAD Emergency Referral Working Group. As such, we strongly believe that the entire negotiated policy should appear in the Administrative Plan, instead of being hyperlinked within. Putting this negotiated RAD Emergency Referral policy in its entirety in the

Admin Plan, including the definitions of qualifying emergencies, required documentation to prove those emergencies, and SFHA's and owners' role and responsibilities (especially regarding critically important timelines for tenants with time-sensitive emergencies) would better hold all parties responsible for the policy's agreed upon terms and would ensure that any future changes would be subject to public input and transparency.

The following sentence should be added at the end of the second paragraph:

“The SFHA will follow the policies and procedures described here [insert link] to transfer certified referrals in an expedient manner.”

Additionally, SFHA should remove the summarized definitions included before the chart and keep the negotiated definitions of emergencies that appear in the “description” column of the chart.

The following language should also be added to this section:

“Certified RAD Participant Household Emergency Referrals shall be offered the first available unit from the properties selected by the RAD participant household on the Certified Emergency Referral Form. RAD participant households may refuse to accept an emergency referral for “*good cause*.” *Good cause* for refusal of an emergency referral is limited to the following:

- The RAD participant household documents to the SFHA’s satisfaction that accepting the offer will place a household member’s life, health or safety in jeopardy. The RAD participant household should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or other certifications or attestations. Reasons offered must be specific to the household.
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member within a RAD participant household.

SFHA will require documentation of good cause for unit refusals.

If the RAD participant household rejects a unit for good cause, they will remain in queue for the next available unit at the properties selected by the RAD participant household on the Certified Emergency Referral Form. Should the household fail to affirmatively accept the offer within 10 business days, including denial of an offer without good cause, the RAD participant household will be deemed to have rejected the offer and the RAD participant household shall lose its emergency referral preference on all site-based waiting lists.”

### **Determining Family Unit Size (p. 629)**

SFHA should clarify that it will not *require* tenants to count living rooms as bedrooms in making voucher size determinations. The tenants may choose to occupy the living room as a bedroom, but SFHA should not require tenants to do so.

Additionally, SFHA should add language to the Administrative Plan to require that, in making voucher size determinations, the SFHA will not *require* members of different generations to share bedrooms. Again, tenants should retain the option to do so, but SFHA should not require it.

The SFHA policy providing that children of the opposite sex, other than those under five (5) years old, may not be required to occupy the same bedroom should be expanded to also include children of opposite gender identification, rather than acknowledging only an assigned at-birth sex designation.

SFHA should also revise the following statement: “The family unit size does not dictate the size of unit the family must actually lease.” This statement is contrary to the regulations governing PBV units, under which the family unit size determination in turn determines the size of the unit that must be leased to the family. (24 CFR 982.402 (“The PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions[;] For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards (family unit size)”); 24 CFR 983.253(b) (“The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards”); 983.260 (“The PHA subsidy standards determine the appropriate unit size for the family size and composition”).) This statement is confusing and misleading because it implies that a family doesn't have the right to an appropriate size unit under SFHA's subsidy standards. Unlike the HCV program, PBV families must be housed in appropriately sized units.

SFHA should also include language in this section similar to that in the “Leasing” and “Overcrowded” sections in Chapter 17, which addresses situations where families are housed in wrong size units. See 24 CFR 983.260(b) (“If the PHA determines that a family is occupying a . . . [w]rong-size unit . . . the PHA must offer the family the opportunity to receive continued housing assistance in another unit” pursuant to the policy stated in the PHA's administrative plan”).

The RAD chapter should also specify the ways in which RAD families who have converted from public housing will be treated differently vis-à-vis right-sizing than families who move in post-conversion. The plan should make clear that, before any new families are offered units in a RAD building, existing families who converted from public housing must be offered an appropriate size unit if one is available. This obligation of the owner/SFHA to offer a right-sized unit includes situations where a converted family's current unit is too small under SFHA's subsidy standards. Where the family's current unit is too small and an appropriate size unit is not available, the plan should require that the family should first be offered the smallest “too large”

unit available. If such a unit is not available, then the family should be offered the next largest available unit. If there is no larger unit available, then the family should be allowed to remain in the unit.

### **Exceptions to Subsidy Standards (p. 630-631)**

If SFHA determines that an exception to the subsidy standards is warranted that results in a family occupying a unit that is too small under the subsidy standards, documentation of that determination and the reasons therefore should be made in writing and maintained in the tenant file. Such documentation should be signed by the tenant and SFHA.

As discussed above, a situation may occur where a family converted under RAD is housed in a unit that is smaller than an "appropriate size unit" under the subsidy standards, but still big enough to comply with HQS. In such case, SFHA should inform the tenant in writing that the assigned unit is too small under the subsidy standards and that the family is entitled to transfer to an appropriately sized unit once one becomes available. In addition, the Plan should set forth a procedure implementing this.

### **Grievance Procedure (p. 635-644)**

The current grievance procedure in the Administrative Plan differs from the more recently updated grievance procedure that is included in RAD tenants' lease packet, including the key timeline requirements. The grievance procedure in the Administrative Plan should be updated to include the grievance procedure that is currently attached to RAD tenants' lease packet.

## **SFHA ADMISSIONS AND CONTINUED OCCUPANCY POLICY**

### **CHAPTER 3: ELIGIBILITY**

#### **3-I.C. Family Break-Up and Remaining Member of Tenant Family**

##### **SFHA Policy**

The rent arrearages by the former head of household incurred within the last three (3) years will be placed in the debts owed module in the Enterprise Income Verification System (EIV). **The EIV entry will be limited to the former head of household and any household members who have voluntarily or involuntarily moved out of the subsidized unit. It will not include the names of remaining family members that continue to live in the subsidized unit.**

*We request that you add the language above to specify that debt will be reported in EIV only for members of the household who have left the program. The EIV debt reporting requirement is triggered when a tenant's participation in the HUD rental assistance program is terminated. Remaining household members who continue to participate in the SFHA public housing program should not have debt reported to EIV in their names.*

*In addition, the added language should be a separate numeral since it is unrelated to the other language in item (3) that addresses remaining family members under the age of 18.*

#### **3-I.M. Live-In Aide**

*SFHA should not deny a live-in aide, who is essential to the care of a tenant, if the proposed live-in aide owes rent or other amounts to the SFHA or to another PHA in connection with the Housing Choice Voucher Program, RAD, or Conventional Public Housing Program under the 1937 Act. The live-in aide's debt to the SFHA or another PHA has no bearing on their fitness as a live-in aide or the tenant's need for their critical care. Additionally, the live-in aide does not pay rent, so past debts owed are not needed to determine the likelihood that the live-in aide will regularly pay rent or other charges as necessary. This policy unfairly penalizes elderly or disabled public housing participants by potentially depriving them of the best-suited provider of live-in assistance.*

### **3-III.C. Other Permitted Reasons for Denial of Admission**

#### SFHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past ~~five~~ *three* years, the family will be denied admission.

*SFHA should exercise discretion and lower the time period from five years to three years as permissible by federal regulations.*

#### SFHA Policy

The SFHA will deny admission to an applicant family if the SFHA determines that the family...  
Owes rent or other amounts to SFHA ~~within the last three (3) years~~ **this or any other PHA within the last three (3) years** or owner in connection with any assisted housing program, including breach of the terms of a repayment agreement entered into with the SFHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

*We support the proposed change that limits the grounds for denial of admission to debt owed in the past three years. We suggest that SFHA extend the three year limitation to debt owed to any PHA.*

#### SFHA Policy

Has engaged in or threatened violent or abusive behavior toward SFHA personnel.

*Language should be added to allow SFHA to consider the extent of culpability of SFHA staff in escalating a negative interaction with a household member by responding in an inappropriate fashion or a pattern of engaging with tenants in an unprofessional manner.*

## **CHAPTER 6: INCOME AND RENT DETERMINATIONS**

### **6-III.B. Financial Hardships Affecting Minimum rent**

#### SFHA Policy

Financial hardships do not apply to repayment/housing retention agreements. Additionally, a hardship must be requested within 15 calendar days from the TTP redetermination.

*We request that this proposed addition be removed.*

*If SFHA finds that a family is unable to pay the minimum rent of \$25.00, it is unreasonable and unduly burdensome to require that they continue to make payments on a housing retention*

*agreement. In addition, this is inconsistent with the language in Chapter 16 which does allow for consideration of undue financial hardship. At the very least, SFHA should exercise discretion in determining whether a family's hardship exemption should suspend the repayment agreement in addition to the minimum rent.*

*Imposing a fifteen day limitation on requesting a hardship is unreasonable. If a family is already paying the minimum rent and experiences an additional decrease in income that meets the standards of financial hardship, their request for a rent suspension should not be tied to the date of a TTP redetermination as it would be unnecessary to conduct an interim reexamination. The fifteen day deadline should either be removed or additional language should be added to exempt situations where it is impractical to request a hardship within 15 days of TTP redetermination.*

## **CHAPTER 8: LEASING AND INSPECTIONS**

### **8-II.D. Inspection Results**

To request rent abatement for habitability issues reported before January 1, 2015, a tenant must fill out a "Rent Abatement Request" form and submit it to the property office during their tenancy with the SFHA.

*We discourage SFHA from adopting a requirement that the "Rent Abatement Request" form be submitted during a family's tenancy with SFHA. This provision is particularly problematic for tenancies that are converting to PBV, RAD, or HOPE SF. These tenants may not be aware of the need to request abatement until after SFHA has completed reconciling their tenant file. We know that SFHA is working diligently to ensure timely reconciliation of tenant ledgers, but the reconciliation was not finalized by conversion for some RAD Phase I tenants, and we are still in the process of negotiating repayment agreements for some of these families. We request that SFHA delete the proposed language, or at the least, create an exception to this requirement when abatement is requested in connection with negotiating a repayment agreement.*

## **CHAPTER 9: REEXAMINATIONS**

### **9-I.E. Effective Dates**

*The language "or an interim reexamination" must be removed. Part I of Chapter 9 involves annual reexaminations. Part III of Chapter 9 covers interim reexaminations. Any policies regarding interim reexaminations should be detailed in Part III.*

### **9-III.D. Processing the Interim Reexamination**

*We strongly urge SFHA to keep the original language that provides an earlier effective date for decreases in tenant rent. There is a clear policy reason for setting a faster timeline for implementing tenant rent decreases. For tenants living on limited resources, a decrease in their*



*household income could make it impossible to afford their previous rent portion for an additional thirty days. The proposed language change risks putting tenants in the precarious position of not paying unaffordable rent and facing eviction, or forgoing basic life necessities in order to preserve stable housing.*

*In addition, households should not lose a retroactive benefit in instances where a verification delay is caused by SFHA or other persons outside the control of a household. The following sentence should not be deleted: In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.*

## **CHAPTER 16: PROGRAM ADMINISTRATION**

### **16-III.B. Repayment Policy**

*SFHA should not set a \$25 ceiling for a minimum repayment amount. The ACOP should allow for case by case consideration of the circumstances, and permit a hardship exemption when a family is unable to afford monthly payments due to a loss in household income.*

#### **Repayment Agreements Requested of Ex-Tenants**

*Since this section specifically applies to former public housing tenants who converted to the Housing Choice Voucher Program, this language would more appropriately be placed in the Administrative Plan.*

*SFHA should allow repayment agreements for former public housing tenants and should not require full payment. Creating unduly harsh policies does little to increase the likelihood that tenants will pay debts to SFHA. If a former tenant is unable to afford paying off a debt in full, then this policy penalizes the tenant, creates another homeless family, and provides no benefit to SFHA. This proposed addition should be removed, or at the very least modified to allow for discretion and consideration of individual circumstances.*

## Appendix M: Public Housing Authority Plan Timeline

Public Housing Authority Plan Timeline<sup>1</sup>

Action	Jan. 1 FY Start Date	Apr. 1 FY Start Date	July 1 FY Start Date	Oct. 1 FY Start Date
PHA should begin to develop plan for coming year. RAB and tenants should review prior year plan, develop issues, determine progress on prior year goals and strategies. Current year approved plan attachments and supporting documents are available for review.	May (Prior Year) 8 mos.	Aug. (Prior Year) 8 mos.	Nov. (Prior Year) 8 mos.	Feb. 8 mos.
PHA should have available a draft plan and should be discussing the plan with RAB and tenants and other advocates, such as housing advocates, disability rights groups, homeless advocates and other agencies such as welfare and jurisdiction consolidated plan agency.	Mid-July (Prior Year) 5.5 mos.	Mid-Oct. (Prior Year) 5.5 mos.	Mid-Jan. 5.5 mos.	Mid-Apr. 5.5 mos.
Notice of hearing, proposed plan on file for review, RAB members names published.	Mid-Aug. (Prior Year) 4.5 mos.	Mid-Nov. (Prior Year) 4.5 mos.	Mid-Feb. 4.5 mos.	Mid-May 4.5 mos.
Public hearing (time should be allowed between public hearing and date plan is due at HUD to make revisions based upon comment).	First week Oct. (Prior Year) 3 mos.	First week Jan. 3 mos.	First week Apr. 3 mos.	First week July 3 mos.
Plan due at HUD.	Mid-Oct. (Prior Year) 2.5 mos.	Mid-Jan. 2.5 mos.	Mid-Apr. 2.5 mos.	Mid-July 2.5 mos.
HUD approves plan and notifies PHA. PHA provides RAB with a copy of approved plan, notice of approval and funding awards. Or plan rejected.	Jan. 1	Apr. 1	July 1	Oct. 1

<sup>1</sup> Prepared by the National Housing Law Project November 2001.

## Appendix N: Housing and Land Use Glossary

**A**

**Abstract of Judgment:** A condensation of the essential provisions of a court judgment. See Judgment.

**Abstract of Title:** A complete, written history of the title transaction of conditions bearing on the title to a designated parcel of land.

**Acceleration clause:** A clause in a note, bond, mortgage or deed of trust giving the lender the right to demand the remaining balance due and payable before its original date because regular mortgage payments are not made or for breach of other conditions of the mortgage.

**Acres, Gross:** The entire acreage of a site. Most communities calculate gross acreage to the centerline of proposed bounding streets and to the edge of the right-of-way of existing or dedicated streets.

**Acres, Net:** The portion of a site that can actually be built upon. The following generally are not included in the net acreage of a site: public or private road rights-of-way, public open space, and flood ways.

**Adjustable living expenses:** Variable expenses, such as costs of groceries and utilities.

**Adjustable-Rate Mortgage (ARM):** A mortgage in which the interest rate is not fixed, but changes during the life of the loan in line with movements in an index rate. The rate is usually based on indices tied to the nation's economy. See also Convertible Loan.

**Affidavit:** A sworn statement, made voluntarily, in writing before an officer having authority to administer such an oath.

**Affordable housing:** Housing capable of being purchased or rented by a household with very low, low, or moderate- income, based on that household's ability to make monthly payments necessary to obtain housing. Housing is considered affordable when a household pays less than 30% of its gross monthly income (GMI) for housing including utilities.

**Affordable Housing Program (AHP):** A federal program through which Federal Home Loan Banks (FHLBanks) provide low-cost advances and direct subsidies to member banks to finance the purchase, construction and rehabilitation of owner-occupied housing for low- and moderate-income households.

**Alienation:** The transfer of ownership of real property from one person to another.

**American Land Title Association (ALTA):** A national association of title insurance companies, abstractors and attorneys, specializing in real property. The Association speaks for the title insurance abstracting industry and establishes standard procedures and title policy forms.

**Amortization:** A process of paying off a loan by a schedule of payments over a fixed time period.

**Annual Percentage Rate (APR):** A uniform measure of the cost of credit that includes interest, discount points and loan fees.

**Appraisal:** An estimate of a property's fair market value by a licensed professional. Lenders take the appraisal into account when deciding whether or not to make loans.

**Appreciation:** An increase in the property value due to changes in market conditions or other causes.

**Article 34 Referendum:** Article 34 of the Constitution of the State of California requires passage of a referendum within a city or county for approval of the development or acquisition of a publicly financed housing project where more than 49% of the units are set aside for low-income households.

**Assessed Value (AV):** The amount used by the county tax assessor to value a real property for tax purposes. Assessed value is generally the market value of property. Assessed value multiplied by the tax rate determines property tax.

**Asset:** Anything of value that one owns.

**Assumption:** An agreement, as a condition of sale, to adopt a debt or other obligation of the selling party.

## B

**Balloon payment:** The name given to the last payment of a loan, if larger than the preceding payments.

**Bankruptcy:** When a person is declared by a court to be unable to pay her or his debts, that person is in bankruptcy.

**Base Year:** The year in which the redevelopment plan is adopted.

**Base Year Value:** The total assessed value of property within a project area in the year in which the redevelopment project is approved.

**Below-market-rate housing unit (BMR):** Any housing unit specifically priced to be sold or rented to low- or moderate- income households for an amount less than the fair-market value of the unit. Both the State of California and HUD set the standards for determining which households qualify as low- income or moderate- income; the financing of housing at less than prevailing interest rates.

**Beneficiary:** The lender, when referred to in a Deed of Trust. See also Deed of Trust.

**Billing cycle:** The period between billings for products and services, usually a month.

**Binder:** A preliminary agreement, secured by the payment of earnest money, under which a buyer offers to purchase real estate. See Earnest Money.

**Blighted areas:** Areas and/or structures (buildings, streets, storm drain pipes, etc.) of a community which constitute physical and/or economic liabilities which may be benefited by redevelopment in the interest of the health, safety and general welfare of the people of the community.

**Blue-print:** An architect's or designer's detailed plan for a building.

**Board of Supervisors:** A county's legislative body. Board members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations and establishing county policy. The board adopts the general plan, zoning and subdivision regulations.

**Bond:** An interest-bearing promise to pay a stipulated sum of money, with the principle amount due on a specific date.

**Borrower:** The person who receives the loan to buy a house.

**Building permit:** A written permit that must be purchased from the appropriate local government to construct or renovate any type of property.

**Buyer's agent:** A real estate agent who works for the buyer of a house, not the seller.

## C

**California Department of Housing and Community Development (HCD):** See Housing and Community Development

**California Department of Transportation (CalTrans):** Responsible for planning, designing, building, operating and maintaining state road system.

**California Environmental Quality Act (CEQA):** A state law requiring state and local agencies to regulate activities with consideration for environmental protection. If a proposed activity has the potential for a significant adverse environmental impact, an Environmental Impact Report (EIR) must be prepared and certified as to its adequacy before taking action on the proposed project.

**California Housing Finance Agency (CalHFA):** A state agency, established by the Housing and Home Finance Act of 1975, which is authorized to sell revenue bonds and generate funds for development, rehabilitation and conservation on low and moderate income housing. Formerly known as CHFA.

**California Redevelopment Agency (CRA):** Two affiliated non-profit organizations-CA Redevelopment Agency and CA Redevelopment Agency Association. Together they represent 350 development agencies in the state.

**California Rural Legal Assistance, Inc. (CRLA):** A statewide nonprofit organization that advocates on behalf of the rural poor.

**Cap:** Refers to the maximum allowable interest rate increases for adjustable rate mortgages.

**Capital gains tax:** A tax owed for selling something at a price that is more than the price the owner originally paid.

**Capital Improvements Program (CIP):** A program, administered by a city or county government and reviewed by its planning commission, which schedules permanent improvements, usually for a minimum of five years in the future, to fit projected fiscal capability of the local jurisdiction. The program generally is reviewed annually, for conformance to and consistency with, the general plan.



**Capital loss:** Financial loss experienced when a property is ultimately sold for less than its original purchase price.

**Cash reserve:** A requirement of some lenders that buyers have sufficient cash remaining after closing to make the first two mortgage payments.

**Certificate of Completion:** A document issued by an architect or engineer stating that a construction project is completed in accordance with the terms, conditions, approved plans and according to specifications.

**Certificate of Occupancy:** Written authorization given by a local authority that allows a newly completed or substantially completed structure to be inhabited.

**Chain of Title:** The history of all the documents transferring title to a parcel of real property, starting with the earliest existing document and ending with the most recent.

**Charter City:** A city which has been incorporated under its own charter rather than under the general laws of the state. Charter cities have broader powers to enact land use regulations than do general law cities.

**Clear Title:** Title not encumbered with liens or burdened with defects as to ownership. See also Marketable Title.

**Circulation Element:** One of the seven state-mandated elements of a local general plan, it contains adopted goals, policies, and implementation programs for the planning and management of existing and proposed thoroughfares, transportation routes, and terminals, as well as local public utilities and facilities, all correlated with the land use element of the general plan.

**Closing:** The conclusion of a transaction. In real estate, closing includes the delivery of a deed, financial adjustments, the signing of notes, and the disbursement of funds necessary to the sale or loan transaction. Also called Settlement.

**Closing costs:** All of the costs to the buyer and the seller excluding the price of the property, which are associated with the purchase, sale or refinancing of real property. See also Settlement Costs.

**Closing costs (borrowers):** Money paid by the borrower to effect the closing of a mortgage loan. This normally includes an origination fee, title insurance, survey, attorney's fees and such prepaid items as taxes and insurance escrow payments.

**Closing statement:** A financial statement disclosure given at closing, of all funds credited and charged to whom and for how much. Includes escrow deposits for taxes, hazard insurance and mortgage insurance for the escrow account. (Form HUD 1)

**Cloud on Title:** Any conditions revealed by a title search that adversely affect the title to real estate. Usually cannot be removed except by quit-claim deed, release or court action.

**Collateral:** Security pledged for the payment of a loan. A lender can take legal possession of such a pledge from a defaulting borrower. A house is collateral for a mortgage loan.

**Collection agencies:** Private businesses, hired by creditors, which collect payments on delinquent loans or unpaid debts. Usually payment for such collections is a portion of the recovered money.

**Commission:** The fee a real estate agent is paid for helping to sell a house usually based on the purchase price of said house.

**Commitment letter:** A formal offer by a lender stating the terms under which that lender agrees to loan money to a homebuyer. See also Pre-qualification.

**Community Development Block Grant Program (CDBG):** A grant program administered by the U.S. Department of Housing and Urban Development (HUD) that provides federal grants directly to larger cities and counties for activities that benefit low- and moderate-income individuals, eliminate urban blight, or addresses a serious and immediate threat to public health and welfare. States distribute CDBG funds to smaller cities and towns. Grant amounts are determined by a formula based on need. Provides eligible metropolitan cities, urban counties (called "entitlement communities"), and state governments for rural areas with annual direct grants that can be used to revitalize neighborhoods, expand affordable housing and economic opportunities, and/or improve community facilities and services, principally to benefit low- and moderate-income persons.

**Community Home Buyer's Program:** An alternative financing option that allows households of modest means to qualify for mortgages using nontraditional credit histories, 33% housing-to-income and 38% debt to-income ratios and the waiver of the usual two payment cash reserve at closing.

**Community home improvement mortgage loan:** An alternative financing option that allows low- and moderate- income home buyers to obtain 95% financing for the purchase and improvement of a home in need of modest repairs.

**Community Housing Development Organization (CHDO):** A private nonprofit organization certified by the state that meets the federal criteria to receive HOME Investment Partnership Program (HOME) funds. A minimum of 15% of total HOME funds are reserved for CHDOs.

**Community land trust mortgage loan:** An alternative financing option that enables low- and moderate-income home buyers to purchase housing that has been improved by a nonprofit Community Land Trust, and to lease the land on which the property stands.

**Community Plan:** A portion of the local general plan that focuses on a particular area or community within the city or county. Community plans supplement the policies of the general plan.

**Community Redevelopment Law (CRL):** Redevelopment Law of the State contained in California Health and Safety Code, Division 24, Part I (Section 33000 *et seq.*).

**Community Reinvestment Act (CRA):** A federal regulation designed to encourage banks to meet the credit needs of their local communities, including low-and moderate-income neighborhoods.

**Comparable sales:** Properties of reasonably the same size and location with similar amenities; properties which have been recently sold, which have characteristics similar to property under consideration, thereby an indication the approximate fair market value of the subject property. Commonly referred to as comparables or comps.

**Comprehensive Housing Affordability Strategy (CHAS):** Data, not normally available from census records, received by HUD from the 2000 census. Comprised mostly of housing needs variables split by HUD-defined income limit (30, 50 & 80% of median income) and HUD specified household types.

**Conditional Use Permit (CUP):** Pursuant to the zoning ordinance, a conditional use permit may authorize uses not routinely allowed on a particular site. CUPs require a public hearing and, if approval is granted, are usually subject to the fulfillment of certain conditions by the developer. Approval of a CUP is not a change in zoning.

**Condominium:** A form of property ownership in which the homeowner holds title to an individual dwelling unit plus an undivided interest in common areas of a multi-unit project and sometimes the exclusive use of certain limited common areas. See also Homeowner's Association.

**Condominium conversion:** Changing the ownership of an existing building (usually a rental project) to the condominium form of ownership.

**Congregate Care:** Apartment housing, usually for seniors, in a group setting that includes independent living and sleeping accommodations in conjunction with shared dining and recreational facilities.

**Conservation Element:** One of the seven state-mandated elements of a local general plan, it contains adopted goals, policies, and implementation programs for the conservation, development, and use of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources.

**Consistent:** Free from variation or contradiction. Programs in the General Plan are to be consistent, not contradictory or preferential. State law requires consistency between a general plan and implementation measures such as the zoning ordinance.

**Consolidated Plan:** Designed to be a collaborative process whereby a community establishes a unified vision for community development action. Offers local jurisdictions the opportunity to shape various housing and community development programs into effective, coordinated neighborhood and community development strategies. Commonly referred to as ConPlan.

**Construction loan:** A short-term loan for financing the cost of construction. The lender advances funds to the builder at periodic intervals as the work progresses.

**Construction loan agreement:** A written agreement between a lender and a builder or borrower in which the specific terms and conditions of a construction loan, including the schedule of payments, are spelled out.

**Construction loan draw:** The partial disbursement of the construction loan, based on the schedule of payments in a loan agreement.

**Construction-permanent loan:** A permanent loan which includes the construction period. It contains a construction phase, during which disbursements are made according to the progress of construction and interest is billed monthly on the amounts disbursed and outstanding. After construction is complete and the funds are fully disbursed, it converts into a permanent loan with an amortization period of up to 360 months. Modification is not required.

**Consumer credit counseling services:** Nonprofit local agencies that provide credit counseling services to people for free or a small fee.

**Consumer credit counselor:** A counselor who helps consumers to develop a plan for getting out of debt.

**Contingency:** An item in a real estate sales contract stating that the contract is good only in certain cases, for example, only if the buyer obtains financing at a certain rate or only if the seller replaces the shingles on the roof. The contingencies must be written into the contract.

**Conventional mortgage:** Any mortgage that is not insured or guaranteed by the federal government.

**Conversion provision:** A feature of an adjustable-rate mortgage loan that allows the borrower to change to a fixed-rate loan, with an interest rate and monthly payment that stay the same.

**Convertible Loan:** A type of Adjustable Rate Mortgage (ARM) that includes an option for the mortgagor to change the mortgage to a fixed rate mortgage in the early years of the mortgage term.

**Convey:** To transfer property.

**Cooperative:** A form of multiple ownership of real estate in which a cooperation holds a title to a property and grants occupancy rights to particular apartments or units to shareholders by means of proprietary leases or similar arrangements.

**Co-signer:** A person who signs loan documents, such as a mortgage note with another person. The co-signer is responsible for making payments, if the borrower does not.

**Cost of funds index:** An index that is used to determine interest rate changes for certain ARM plans. Often used by California lenders, it represents the weighted average cost of savings, borrowings and advances of the 11th District member of the Federal Home Loan Bank of San Francisco.

**Council of Governments (COG):** Regional agencies concerned primarily with transportation planning and housing. They do not directly regulate land use. There are 25 COGs in California made up of elected officials from member cities and counties.

**Counter-offer:** If a seller does not like a buyer's offer, the seller can either reject the offer or make a counter-offer.

**County Recorder:** The government office in a county in which the documents pertaining to property and persons are recorded and made available to the public.

**Covenant(s):** A clause (or clauses) in a mortgage that legally obligates or restricts the borrower and which, if violated, can result in foreclosure.

**Covenants, Conditions and Restrictions (CC&Rs):** The basic rules establishing the rights and obligations of owners of real property within a subdivision or other tract of land in relation to other owners within the same subdivision or tract and in relation to an association of owners organized for the purpose of operating and maintaining property commonly held by the individual owners.

**Credit bureau:** A company that keeps track of an individual's debt history. The three main credit bureaus are TRW, Equifax, and TransUnion. Also called Credit Reporting Agency.

**Credit history:** The record of an individual's payment of debt over time. That record is kept by three national credit bureaus, which send it to businesses, lenders and creditors or to an individual, upon request.

**Creditor:** Any person or company that lends money, i.e., extends credit.

**Credit rating:** A credit bureau's indication of the risk involved when giving credit to a person or firm.

**Credit report:** A report of an individual's credit history prepared by a credit bureau and used by a lender in determining an applicant's credit worthiness.

**Credit score:** Takes into account payment history, current level of indebtedness, types of credit used, length of credit history and new credit, in determining credit risk. See FICO Score.

**Credit Union:** A cooperative financial institution. It offers savings and checking accounts and other financial services for members.

**Creditworthy:** A person whom a lender judges will repay a loan is credit worthy.

## D

**Daily interest:** The amount of interest the borrower pays the lender calculated on a daily basis. It equals the annual interest rate divided by 360 or 365 and multiplied by the amount of the loan. Also called Per Diem Interest.

**Debt management plan:** A bill payment plan. The plan is agreed to by the borrower and creditor.

**Debt-to-income ratio:** Percentages lenders use to decide whether a loan applicant can afford to make payments on a certain mortgage loan. Lenders may allow first-time home-buyers to use 33% of monthly income for housing costs and a total of 38% for housing costs and all other debts.

**Deduct:** To subtract an amount from income that is being taxed. Homeowners can deduct interest paid on mortgage loans, points paid at settlement, home improvements and related items.

**Deed:** The legal document conveying title to a property. See Grant Deed.

**Deed of Trust:** A document used in some localities in place of a mortgage agreement. A deed of trust places the title to subject property into trust for the lender during the term of the loan.

**Default:** The failure of a borrower to make payments on a loan or in some other way fail to fulfill the terms of a note, mortgage or loan agreement.

**Delinquency:** A loan on which a payment is overdue, but not yet in default.

**Density bonus:** The allocation of development rights that allow a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned, usually in exchange for the provision or preservation of an amenity at the same site or at another location. Under California law, a housing development that provides 20% of its units for lower-income households, or 10% for very low-income households, or 50% for seniors is entitled to a density bonus. (Government Code Section 65915).

**Density, Residential:** The number of permanent residential dwelling units per acre of land. Densities specified in a General Plan may be expressed in units per gross acre or per net developable acre.

**Density Transfer:** A way of retaining open space by concentrating densities (usually in compact areas adjacent to existing urbanization and utilities) while leaving unchanged historic, sensitive or hazardous areas. In some jurisdictions, for example, developers can buy development rights of properties targeted for public open space and transfer the additional density to the base number of units permitted in the zone in which they propose to develop.

**Department of Fair Employment and Housing (DFEH):** A state agency responsible for enforcing laws prohibiting discrimination in employment, housing and public accommodations. See also FEHA.

**Deposit:** The money a buyer pays to the seller when a purchase contract is signed to show that the deal is entered in good faith. See also Earnest Money and Good Faith Deposit.

**Depreciation:** A decline in the value in real property brought about by age, physical deterioration or functional or economic obsolescence of appreciation. The opposite of appreciation.

**Design Review Committee:** A group appointed by a city council to consider the design and aesthetics of development within design review zoning districts.

**Design Review; Design Control:** The comprehensive evaluation of a development and its impact on neighboring properties and the community as a whole, from the standpoint of site and landscape design, architecture, materials, colors, lighting, and signs, in accordance with a set of adopted criteria and standards. Design Control requires that certain specific things be done and that other things not be done. Design Control language is most often found within a zoning ordinance. Design Review usually refers to a system set up outside of the zoning ordinance, whereby projects are reviewed against certain standards and criteria by a specifically established design review board or committee.

**Developable Acres, Net:** The portion of a site that can be used for density calculations. Some communities calculate density based on gross acreage. Public or private road rights-of-way are not included in the net developable acreage of a site.

**Development Fees:** Fees charged to developers or builders as a prerequisite to construction or development approval. The most common are: 1) impact fees (such as parkland acquisition fees, school facility fees or street construction fees) related to funding public improvements which are necessitated in part or in whole by the development; 2) connection fees (such as water line fees) to cover the cost of installing public services to the development; 3) permit fees (such as building permits, grading permits, sign permits) for the administrative costs of processing development plans; and, 4) application fees (rezoning, CUP, variance, etc.) for the administrative costs of reviewing and hearing development proposals.

**Development Rights:** The right to develop land by a land owner who maintains fee-simple ownership over the land or by a party other than the owner who has obtained the rights to develop.

**Direct deposit:** Monies deposited directly into a designated bank account by an employer or other financial entity.

**Disabled Family:** When used in connection with the Section 8 voucher program, the federal definition used by HUD to define a family whose head of household, spouse, or sole member is a person with a disability. (24 C.F.R. §5.403).

**Discount:** In loan originations, a discount refers to an amount withheld from loan proceeds by a lender. In secondary market sales, a discount is the amount by which the sale price of a note is



less than its face value. In both instances, the purpose of a discount depends on the money market conditions, the credit of the borrower, and the rate or terms of the note.

**Discount points:** See Points.

**Discretionary spending:** Spending for goods and/or services not required for survival.

**Documentary stamp:** A form of tax imposed, in some states, on the transfer of real property.

**Down payment:** The difference between the sale price of a piece of real estate and the mortgage amount, usually 5% to 20% of the loan amount.

**Downzoning:** Refers to the rezoning of land to a more restrictive zone (for example, from multi-family residential to single-family residential or from residential to agricultural).

**Duet:** A detached building designed for occupation as the residence of two families living independently of each other, with each family's living area defined by a separate fee title ownership.

**Duplex:** A detached building under single ownership that is designed for occupation as the residence of two families living independently of each other.

**Dwelling Unit:** A room or group of rooms which constitutes an independent housekeeping unit occupied or intended for occupancy by one household on a long-term basis.

## E

**Earnest Money:** A sum of money given to bind a sale of real estate or assure payment or an advance of funds in the processing of a loan; a deposit. Also called Deposit and Good Faith Deposit.

**Easement:** A right to limited use or enjoyment of land held by another.

**Elderly Family:** The federal definition by HUD to define a family whose head of household, spouse or sole member is a person who is at least 62 years of age. (24 C.F.R. §5.403).

**Elderly Housing:** Typically one and two bedroom apartments or condominiums designed to meet the needs of persons 62 years of age and older or, if more than 150 units, persons 55 years of age and older, and restricted to occupancy by them.

**Emergency Housing Assistance Program (EHAP):** A program of the California Department of Housing and Community Development (HCD) that provides grants to local agencies and nonprofit organizations. The grants are used to operate emergency shelters, transitional housing projects and supportive services for homeless individuals and families.

**Emergency Shelter:** A facility that provides immediate and short-term housing and supplemental services for the homeless. Supplemental services may include food, counseling and access to other social programs.

**Eminent Domain:** The right of a public entity to acquire private property for necessary public use by condemnation plus the payment of just compensation.

**Encourage:** To stimulate or foster a particular condition through direct or indirect action by the private sector or government agencies.

**Encroachment:** An improvement that intrudes illegally upon another's property.

**Encumbrance:** Anything that imposes a legal burden on title to land such as mortgages, liens for security purposes, easements and restrictive covenants.

**Enhance:** To improve existing conditions by increasing the quantity of beneficial uses or features.

**Environmental Impact Report (EIR):** A detailed review of a proposed project, its potential adverse impacts upon the environment and measures that may avoid or reduce those impacts.

**Environmental Impact Statement (EIS):** Typically containing four parts: purpose and need of proposed action; description of affected environment; a range of alternatives to proposed actions; analysis of environmental impact of each possible alternative; the EIS is the written EIR.

**Equal Credit Opportunity Act:** A federal law stating that creditors cannot discriminate against a borrower because of race, color, religion, national origin, sex, marital status, age and/or receipt of public assistance.

**Equity:** The interest or value which an owner has in real estate over and above the liens against it. The difference between a property's fair market value and the amount the owner owes on said property. See also Home Equity Loan.

**Escrow:** A deed, bond, money or real-estate given into the care of a third party to be delivered to the obliged upon fulfillment of a condition. In the case of land or other real property, the deed becomes effective when the buyer fulfills certain conditions.

**Escrow costs:** All the costs to the buyer and seller individually, associated with the purchase, sale, or financing of real property. They include, but are not limited to, prorating of agreed items such as taxes and rents, the cost of title insurance policies, the cost of credit reports, recording fees and escrow fees.

**Escrow deposit account:** An amount set up by the lender into which the borrower makes periodic payments, usually monthly, for taxes, hazard insurance, assessments, and mortgage insurance premiums. The funds are held in trust by the lender who pays the sums as they become due.

**Estate sale:** A sale held to dispose of property otherwise, of a deceased party.

**Exaction:** A contribution or payment required as an authorized precondition for receiving a development permit; usually refers to mandatory dedication (or fee in lieu of dedication) requirements found in many subdivision regulations.

**Extremely Low-Income Household:** A household with an annual income no greater than 30% of the area median family income adjusted by household size. See also Very Low-Income Household.

## F

**Factory Built Housing:** See Modular Units.

**Fair Credit Billing Act:** A federal law that gives a borrower the right to question credit card bills from companies other than banks. The law lays out a process for a borrower to follow if a credit-card bill is, or appears to be, wrong.

**Fair Credit Reporting Act:** A federal law that protects a borrower's right to know what is in her or his credit report and the right to correct errors. The law lays out a process for disputing a credit report.

**Fair Debt Collection Practices Act:** A federal law that protects consumers from abuse or threats from collection agencies trying to get overdue payments.

**Fair Employment and Housing Act (FEHA):** A state statute that 1) prohibits discrimination and harassment in all aspects of housing (including sales and rentals, evictions, terms and conditions, mortgage loans and insurance, and land use and zoning; 2) requires housing providers to

reasonably accommodate persons with disabilities and 3) prohibits retaliation against any person who tries to exercise these rights.

**Fair Housing Act of 1968 (FHA):** A federal law that states which housing and real estate practices are discriminatory. The law also states in what ways those practices are to be avoided by lenders and real estate practitioners. California also has a fair housing act.

**Fair Market Rent (FMR):** The federally-determined rent that HUD uses to calculate the Section 8 subsidy.

**Fair Market Value (FMV):** Price at which property is transferred between a willing buyer and a willing seller, each of whom has a reasonable knowledge of all pertinent facts and neither being under any compulsion to buy or sell.

**Family:** 1) Two or more persons related by birth, marriage or adoption [U.S. Bureau of the Census]. 2) An individual or a group of persons living together who constitute a bona fide single-family housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house or institution of any kind.

**Fannie Mae:** See Federal National Housing Mortgage Association (FNMA).

**Farmers Home Administration (FmHa):** An agency of the Department of Agriculture whose primary responsibility is to provide financial assistance on reasonable terms from private sources to farmers and others living in rural areas where financing is not otherwise available. See Rural Housing Service.

**Federal Deposit Insurance Corporation (FDIC):** Insures deposits at the nation's more than 10,000 banks and savings associations. It promotes the safety and soundness of these institutions by identifying, monitoring and addressing risks to which they are exposed.

**Federal Emergency Management Agency (FEMA):** Coordinates the response to a disaster which has occurred in the U.S. and which overwhelms the resources of local and state authorities. An agency of the Department of Homeland Security.

**Federal Emergency Shelter Grant (FESG):** A program of the U.S. Department of Housing and Urban Development (HUD) that makes grants to state and local agencies to provide homeless persons with basic shelter and essential support services.

**Federal Highway Administration (FHWA):** Responsible for ensuring that roads and highways are safe and technologically up to date. Provides financial and technical support to State, local and tribal governments to construct, improve and preserve highways.

**Federal Home Loan Banks (FHLB):** Formerly the regulatory and supervisory agency for federally chartered savings institutions. It has been replaced by the Office of Thrift Supervision.

**Federal Home Loan Bank System:** Through its 12 District Banks, the FHLB makes advances to over 7,000 member financial institutions, which in turn lend the funds for home mortgages and community development. Also see AHP.

**Federal Home Loan Mortgage Corporation (FHLMC):** A Congressionally chartered corporation that purchases conventional mortgages in the secondary market to increase the supply of funds that mortgage lenders can make available to homebuyers. Popularly known as Freddie Mac. See also FNMA and Secondary Market.

**Federal Housing Administration (FHA):** A division of the Department of Housing and Urban Development (HUD). Its main activity is the insuring of residential mortgage loans made by private lenders. It sets standards for construction and underwriting. FHA does not lend money, plan or construct, housing.

**Federal Housing Administration Loan:** A mortgage that is insured by the Federal Housing Administration.

**Federal Housing Administration Mortgage:** A mortgage that is insured by the Federal Housing administration; may be referred to as a "government" mortgage.

**Federal Housing Finance Board (FHFB):** regulates the Federal Home Loan Bank System. The board has the statutory responsibility of ensuring that the member Banks carry out their housing and community investment finance mission.

**Federal National Housing Mortgage Association (FNMA):** A tax paying corporation created by Congress to support the secondary mortgage market. It purchases and sells residential mortgages insured by FHA or guaranteed by VA, as well as conventional home mortgages. Popularly known as Fannie Mae.

**Federal Reserve System:** The federal banking system of the United States under the control of a central board of governors (Federal Reserve Board) The system's duties fall into four general areas: conducting the nation's monetary policy; supervising and regulating banking institutions;

maintaining the stability of the financial system; and providing certain financial services to the U.S. government, the public, financial institutions and foreign official institutions.

**Fee simple:** Absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance. The term fee used independently is an adequate designation of this type of estate in land. The term simple is added to distinguish clearly this estate from other interests in real property, such as conditional fee.

**FICO Score:** A standard credit score which makes up a substantial portion of a credit report that credit bureaus sell to lenders so they can assess an applicant's credit risk and whether to extend them credit. It is an acronym for its creators: Fair Isaac Credit Organization. See Credit score.

**Final Map Subdivision:** Also called tract maps or major subdivisions, are land divisions which create five or more lots. They must be consistent with the general plan and are generally subject to stricter requirements than parcel maps. Such requirements may include installing road improvements, the construction of drainage and sewer facilities, parkland dedications and more.

**Finance:** To supply money for a purchase. A lender can finance home ownership with a mortgage loan.

**Finance charge:** Cost of consumer credit as a dollar amount. It includes any charges payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to, or a condition of, the extension of credit.

**Financing:** The act of providing funds for business activities, making purchases or investing. Financial institutions and banks are in the business of financing as they provide capital to businesses, consumers and investors to help them achieve their goals.

**Finding(s):** The result(s) of an investigation and the basis upon which decisions are made. Findings are used by government agents and bodies to justify action taken by the entity.

**First Mortgage or First Deed of Trust:** The most important mortgage that has first claim in the event of default; the primary lien against real property. Compare to Secondary Financing.

**First Time Homebuyer Program (FTHB):** A federal definition used by HUD to determine eligibility for the Section 8 Homeownership Program. A first time homebuyer is someone who: 1) has not owned a home during the past three years; 2) a single parent or displaced homemaker who previously owned a home during the past three years; 3) owns a cooperative membership share or 4) of a member of a disabled family in need .of a reasonable accommodation regardless

of whether or not that family owned a home during the past three years. (24 C.F.R. §982.627(b)). See also Disabled Family.

**Fiscal Impact Analysis:** A projection of the direct public costs and revenues resulting from population or employment change to the local jurisdiction(s) in which the change is taking place. Enables local government to evaluate relative fiscal merits of general plans, specific plans or projects.

**Fiscal Impact Report (FIR):** A report projecting the public costs and revenues that will result from a proposed program or development. See Fiscal Impact Analysis.

**Fixed expenses or fixed payments:** Expenses or payments that usually stay the same from month to month, such as rent, a car loan, a student loan, insurance, child support.

**Fixed-rate mortgage:** A mortgage in which the interest rate does not change during the entire term of the loan; it provides for only one interest rate for the entire term of the mortgage.

**Flood insurance:** Insurance required for properties in federally designated flood areas.

**Forbearance:** The lender's postponement of foreclosure to give the borrower time to catch up on overdue payments.

**Foreclosure:** An authorized procedure taken by a mortgagee or lender, under the terms of a mortgage or deed of trust for the purpose of having the property applied to the payment of a defaulted debt.

**Freddie Mac:** See Federal Home Loan Mortgage Corporation (FHLMC).

## G

**General Law City:** A city incorporated under, and run in accordance with, the general laws of the state.

**General Plan:** A compendium of city or county policies regarding its long-term development, in the form of maps and accompanying text. The General Plan is a legal document required of each local agency by the State of California Government Code Section 65301 and adopted by the City Council or Board of Supervisors. The General Plan may also be called "City Plan," "Comprehensive Plan," or "Master Plan." (see Government Code Sections 65300 *et seq.*).

**G.I. Loan:** Popular name for a Department of Veterans Affairs guaranteed mortgage, authorized under the Serviceman's Readjustment Act of 1944. G.I. Loans, guaranteed up to a certain amount, are all used for residential purposes.

**Ginnie Mae:** See General National Mortgage Association (GNMA).

**Goal:** A general, overall, and ultimate purpose, aim or end toward which the city or county will direct effort.

**Good Faith Deposit:** Not to be confused with a down payment. When buyers execute a purchase contract, said contract specifies how much money the buyer is initially putting up to secure the contract, to show "good faith," and how much money all together will be deposited as a down payment. See Deposit and Earnest Money.

**Good Faith Estimate:** A lender is required to give this estimate of a borrower's closing costs to the borrower within three business days of the loan application.

**Government Mortgage:** A mortgage which is insured by the Federal Housing Administration (FHA), or guaranteed by the Department of Veterans' Affairs or the Rural Housing Service. See Federal Housing Administration.

**Government National Mortgage Association (GNMA):** On September 1, 1986, Congress enacted legislation to partition FNMA into two continuing corporate entities. GNMA has assumed responsibility for the special assistance loan program and the management and liquidation function of the older FNMA. Also, GNMA administers the mortgage-backed securities program which channels new sources of funds into residential financing through the sale of privately issued securities carrying a GNMA guaranty. Popularly known as Ginnie Mae.

**Graduated Payment Mortgage:** Mortgage that has terms that allow the monthly mortgage payments to start out low and then increase over the next several years. After the payments reach a certain amount, they stay the same for remaining life of the loan.

**Granny Flat or Granny Housing:** See Second Unit.

**Grant Deed:** A limited warranty deed using the word "grant" that assures that the grantor has not already conveyed the land to another and that the estate is free from encumbrances placed by the grantor. The legal document conveying title to the property. See also Deed.



**Greenbelt:** Forests, woods, parks or fields surrounding or enclosing urban areas. For tax purposes this allows property to be taxed on the use basis as opposed to speculative value developed.

**Gross Monthly Income (GMI):** The total amount of money that a person receives, before taxes and other deductions. This income may include funds from a job or jobs; interest or dividends; alimony; disability payments; or public assistance.

**Group Quarters:** A residential living arrangement, other than the usual house, apartment, or mobile home, in which two or more unrelated persons share living quarters and cooking facilities. Institutional group quarters include nursing homes, orphanages, and prisons. Non-institutional group quarters include dormitories, shelters and large boarding houses.

**Growth Management:** The use by a community of a wide range of techniques in combination to determine the amount, type, and rate of development desired by the community and to channel that growth into designated areas. Growth management policies can be implemented through growth rates, zoning, capital improvement programs, public facilities ordinances, urban limit lines, standards for levels of service, and other programs.

**Guaranteed Loan:** A loan guaranteed by VA, FmHA or any other interested party.

## H

**Hazard insurance:** Insurance that compensates for a loss on a specific property due to damages caused by fire, vandalism, theft, storm damage and certain other natural disasters. The buyer is usually required to buy this insurance to protect the lender from loss of its collateral.

**Historical rehabilitation tax credits (HRTCs):** The federal HRTC program offers tax credits equaling 20 percent of the qualified expenses of the substantial rehabilitation of a commercial, industrial, residential rental, or other depreciable historic property. Buildings that are not on the National Register of Historic Places must be certified as historic through the National Park Service and state historic preservation offices and meet various rehab criteria. HRTCs can be piggybacked with LIHTCs and state historic credits, and can be used in the year after project completion.

**HOME:** Funds from the Department of Housing and Urban Development to local governments and states for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance.

**Home Equity Loan:** A non-purchase money loan that is based on the amount of equity in the home. See Equity.

**Home Inspector:** A licensed professional who looks at all parts of a house and evaluates its condition.

**Homeless:** Persons and families who lack a fixed, regular, and adequate nighttime residence. Includes those staying in temporary emergency shelter or who are accommodated with friends or others with the understanding that shelter is being provided as a last resort. California Housing Element Law, Section 65583(c)(1) requires all cities and counties to address the housing needs of the homeless. See Emergency Shelter.

**Home Mortgage Disclosure Act (HMDA):** Enacted by congress and implemented by the Federal Reserve Board's Regulation C makes information available to the public that helps to show whether financial institutions are serving the housing credit needs of their neighborhoods and communities.

**Homeowners' Association:** An organization of homeowners residing within a particular development whose major purpose is to maintain and provide community facilities and services for the common enjoyment of the residents. Usually created within condominiums, PUDs and other types of "community" housing. Each member of the association (the homeowner) owns a portion of the property (the housing unit or lot) and shares a portion of the common area with other members. See also Condominium and Planned Unit Development.

**Homeowner's Exemption:** A deduction in the amount of tax that is assessed on property. The exemption is only available to owners who live on the property.

**Homeowner's Insurance:** An insurance policy that combines liability coverage and hazard insurance.

**Homeownership Expenses:** The cost of owning a home. Homeownership expenses may include the mortgage payment, insurance, taxes, assessments, homeowner's association dues, repairs, maintenance and costs for making a unit accessible for a person with a disability.

**Homeowner's Warranty:** A type of insurance that covers repairs to specified parts of a house for a specific period of time.

**Household:** All those persons, related or unrelated, who occupy a single housing unit. See Family.

**Housing and Community Development (HCD):** This state agency administers more than 20 programs that award loans and grants for the construction, acquisition, rehabilitation and preservation of affordable rental and ownership housing, homeless shelters and transitional housing, public facilities and infrastructure and the development of jobs for lower income workers. It is one of 13 departments within Business, Transportation and Housing Agency.

**Housing and Urban Development, Department of (HUD):** A cabinet-level department of the federal government, established by the Housing and Urban Development Act of 1965 to supersede the Housing and Home Finance Agency. It is responsible for the implementation and administration of government housing and urban-development programs. The broad range of programs includes community planning and development, housing production and mortgage credit (FHA), equal opportunity in housing, research and technology.

**Housing Authority, Local (LHA):** Local housing agency established in state law, subject to local activation and operation. Originally intended to manage certain federal subsidies, but vested with broad powers to develop and manage other forms of affordable housing.

**Housing Element:** One of the seven state-mandated elements of a local general plan, it assesses the existing and projected housing needs of all economic segments of the community, identifies potential sites adequate to provide the amount and kind of housing needed, and contains adopted goals, policies, and implementation programs for the preservation, improvement, and development of housing. Under California State Law, Housing Elements must be updated every five years.

**Housing Expense Ratio:** The percentage of a person's gross monthly income that it takes to pay a mortgage loan payment plus interest, property taxes, and insurance. Lenders use this ratio to decide whether or not to make mortgage loans.

**Housing Payment Standard:** The total amount that the Housing Authority will pay toward the mortgage payment. The Housing Payment Schedule is based on FMR. See also Fair Market Rent (FMR).

**Housing Set-Aside:** The requirement that 20% of the tax increment be set aside to improve the quantity and/or quality of housing for very low-, low- and moderate-income families, unless certain findings can be made.

**Housing Unit:** The place of permanent or customary abode of a person or family. A housing unit may be a single- family dwelling, a multi-family dwelling, a condominium, a modular home, a mobile home, a cooperative, or any other residential unit considered real property under State

law. A housing unit has, at least, cooking facilities, a bathroom, and a place to sleep. It also is a dwelling that cannot be moved without substantial damage or unreasonable costs. See Dwelling Unit and Household.

## I

**Impact:** The effect of any direct man-made actions or indirect repercussions of man-made actions on existing physical, social, or economic conditions.

**Impact Analysis:** A projection of the direct public costs and revenues resulting from population or employment change to the local jurisdiction(s) in which the change is taking place. Enables local governments to evaluate relative fiscal merits of general plans, specific plans, or projects.

**Impact Fee:** A fee levied on the developer of a project by a city, county, or other public agency as compensation for otherwise unmitigated impacts the project will produce. Also called Development Fees.

**Improvement:** Anything done to a house that increases its value, such as adding a sun porch or modernizing the kitchen.

**Inclusionary Zoning:** A locally-adopted regulatory program that requires that a specific percentage of housing units in a project or development remain affordable to very low- and low-income households for a specific period. Often requires a minimum percentage of housing for low-and moderate-income households in new housing developments and in conversions of rental apartments to condominiums.

**Index:** a number derived from a formula used to characterize a set of data, which serves as an indicator for determining interest rate changes on ARMs/GPARMs. See also Adjustable Rate Mortgage and Margin.

**Infill Development:** Development of vacant land (usually individual lots or left-over properties) within areas that are already largely developed.

**Infrastructure:** Public services and facilities, such as sewage-disposal systems, water-supply systems, power lines, fire stations, other utility systems and facilities such as roads and bridges.

**Initial Interest Rate:** The original interest rate of the mortgage when it is closed. This rate changes for adjustable rate mortgages.

**Initial Study:** Pursuant to CEQA, an analysis of a project's potential environmental effects and their relative significance. An initial study is preliminary to deciding whether to prepare a negative declaration or an EIR.

**Initiative:** A ballot measure which has been placed on the election ballot as a result of voter signatures and which addresses a legislative action. At the local level, initiatives usually focus on changes or additions to the general plan and zoning ordinance. The right to initiative is guaranteed by the Constitution of the State of California.

**In Lieu Fee:** see "Dedication, in lieu of "

**Inspection:** When a house is remodeled or rehabbed it must be inspected by an inspector from the local government to be sure all work is done properly. See also Home Inspector.

**Installment debt:** Debts or accounts that are paid off in monthly payments, or installments, such as credit-card accounts.

**Insured Loan:** A loan insured by FHA or a private mortgage insurance company.

**Inter-agency:** Indicates cooperation between or among two or more discrete agencies in regard to a specific program.

**Interest:** Consideration in the form of money paid for the use of money, usually expressed as an annual percentage, also, a right, share or title in property. A charge that a borrower pays to a lender to borrow money.

**Interest Fee:** Entitles a land owner to exercise complete control over use of land, subject only to government land use regulations.

**Interest Rate:** The percentage of a sum of money charged for its use. See Mortgage Interest Rate.

**Interest Rate Cap:** A provision of an adjustable rate mortgage that limits how much the interest rate may increase per adjustable period. See also Lifetime Cap.

**Investment:** An item, such as a house, on which money is spent in the hope of getting money or other benefits back in return.

## J

**Job/Housing Balance; Jobs/Housing Ratio:** The availability of affordable housing for employees. The job/housing ratio divides the number of jobs in an area by the number of employed residents. A ratio of 1.0 indicates a balance. A ratio greater than 1.0 indicates a net in-commute; less than 1.0 indicates a net out-commute.

**Joint Power Authority (JPA):** A legal arrangement that enables two or more units of government to share authority in order to plan and carry out a specific program or set of programs that serves both units.

**Joint Tenancy:** An equal undivided ownership of property by two or more persons, the survivors to take the interest upon the death of any one of them.

**Judgment:** A decision given by a judge or court that says a person (the debtor) has to pay another person (the creditor) a certain amount of money. A judgment can be recorded against the debtor in the County Recorder's office. If the debtor sells any property, the creditor may be entitled to receive a portion of the sale proceeds to pay the debt.

**Junior Mortgage:** See Second Mortgage.

## L

**Land Banking:** The purchase of land by a local agency for use or resale at a later date. Banked lands have been used for development of low-and moderate-income housing, expansion of parks, and development of industrial and commercial centers.

**Land Use:** The occupation or utilization of land or water area for any human activity or any purpose defined in the General Plan.

**Land Use Classification:** A system for classifying and designating the appropriate use of properties.

**Land Use Element:** One of the seven required elements mandated by the General Plan that uses text and maps to designate the future use or reuse of land within a given jurisdiction's planning area. The land use element serves as a guide to the structuring of zoning and subdivision controls, urban renewal and capital improvements programs, and to official decisions

regarding the distribution and intensity of development and the location of public facilities and open space. See also Mandatory Element.

**Land Use Regulation:** A term encompassing the regulation of land in general and often used to mean those regulations incorporated in the General Plan, as distinct from zoning regulations (which are more specific).

**Late Charge:** The penalty a borrower must pay when a payment is made after the due date.

**Lead Hazards:** Products that are used which, if ingested, can cause lead poisoning and severe health problems. Lead-based paint in older homes is a primary lead hazard, especially for young children and pregnant women.

**Lease-Purchase Mortgage Loan:** An alternative financing option that allows low and moderate-income home buyers to lease a home from a non-profit organization with an option to buy, and with each payment consisting of PIT! I Payments on the first mortgage plus an extra amount that is earmarked for a savings account in which money for a down payment accumulates. See also PITI.

**Legal description:** A property description recognized by law, which is sufficient to locate and identify the property without oral testimony.

**Liability insurance:** Insurance a contractor buys to protect herself and the person who hires her in case someone is hurt or damage is caused during the work she performs on a house.

**Lien:** A legal hold or claim of one person on the property of another as security for a debt or charge that must be paid before a property can be sold. The right given by law to satisfy debt.

**Lifetime Cap:** A provision of an ARM that limits the total increase in interest rates over the life of the loan.

**Linkage:** With respect to jobs/ housing balance, a program designed to offset the impact of employment on housing need within a community, whereby project approval is conditioned on the provision of housing units or the payment of an equivalent in-lieu fee. The linkage program must establish the cause-and-effect relationship between a new commercial or industrial development and the increased demand for housing.

**Listing Agent:** A real estate agent who lists a house for sale. The listing agent represents the seller of the house.

**Listings:** A computerized pool of information, shared by real estate agents, which list houses for sale. See also Multiple Listing Service (MLS).

**Loan Commitment:** See also Commitment Letter.

**Loan Servicer:** An entity that has responsibilities to a lender, including the collection of mortgage payments from borrower.

**Loan Servicing:** The collection of mortgage payments from borrowers and related responsibilities of a loan servicer.

**Loan-to-Value- Percentage:** The relationship between the unpaid principal balance of the mortgage and the property's appraised value (or sales price, if it is lower) expressed as a percentage of the appraised value.

**Loan to Value Ratio (LTV):** The percentage of a property's value that a lender can loan to a borrower.

**Local Agency Formation Commission (LAFCo):** A five or seven member commission within each county that reviews and evaluates all proposals for formation of special districts, incorporation of cities, annexation to special districts or cities, consolidation of districts, and merger of districts with cities.

**Local Housing Authority (LHA):** Local housing agency established in State law, subject to local activation and operation. Originally intended to manage certain federal subsidies, but vested with broad powers to develop and manage other forms of affordable housing.

**Lock-in:** A written agreement guaranteeing the homebuyer a specified interest rate provided the loan is closed within a set period of time. The lock-in also usually specifies the number of points to be paid at closing.

**Lot:** A measured parcel of land having fixed boundaries as shown on the recorded plat. See Site.

**Low Income Household:** A household with an annual income usually no greater than 80% of the area median family income adjusted by household size, as determined by a survey of incomes conducted by a city or a county or in absence of such a survey, based on the latest available eligibility limits established by the U.S Department of Housing and Urban Development (HUD) for the Section 8 housing program. See Area.



**Low Income Housing Tax Credits (LIHTC):** Tax reductions provided by the federal and state governments for investors in housing for low-income households. Sometimes referred to as Section 42 credits (reference to applicable sections of Internal Revenue Code).

**Low and Moderate Income Housing Asset Fund:** A separate account created after the dissolution of redevelopment agencies (2012) for the deposit of money related to affordable housing assets generated from former redevelopment activities. See also Low and Moderate Income Housing Fund.

**Low and Moderate Income Housing Fund (LMIHF):** A separate account of local redevelopment agencies for the deposit of a percentage of tax increment to be spent solely on specific affordable housing activities. Each LMIHF was closed after redevelopment agencies were dissolved. See also Low and Moderate Income Housing Asset Fund.

## M

**Mandatory Element:** A component of the General Plan mandated by California State law, requiring that a General Plan deal with the seven subjects: circulation, conservation, housing, land use, noise, open-space, and safety and specifying to varying degrees the information to be incorporated in each element.

**Manufactured Housing:** Residential structures that are constructed entirely in the factory, and that, since June 15, 1976, have been regulated by the federal manufactured Home Construction and Safety Standards Act of 1974.

**Margin:** The set percentage the lender adds to the index rate to determine the interest rate of an ARM.

**Market Rent:** The price a tenant pays a landlord for the use and occupancy of a real property based on the current prices for a comparable property.

**Market Value:** The highest price that a buyer, willing but not compelled to buy, would pay and the lowest a seller, willing but not compelled to sell, would accept.

**Marketable Title:** A title that may not be completely clear, but has only minor objections that a well-informed and prudent buyer of real estate would accept.

**Maturity:** The date when an agreement or obligation is finished regardless of whether the obligation is paid in full/ the date a time instrument or indebtedness becomes due and payable.

**Mechanics' Lien:** Lien given by statute to those who perform labor, services or furnish materials in the improvement of real property.

**Mello-Roos Bonds:** Locally issued bonds that are repaid by a special tax imposed on property owners within a “community facilities” district established by a governmental entity. The bond proceeds can be used for public improvements and for a limited number of services. Named after the program’s legislative authors.

**Metes and Bounds:** A description in a deed of land location in which the boundaries are defined by directions and distance.

**Mitigation Measure:** The California Environmental Quality Act requires that when an environmental impact or potential impact is identified, measures must be proposed that will eliminate, avoid, rectify, compensate for, or reduce these environmental effects.

**Mixed Use:** Properties on which various uses, such as office, commercial, institutional and residential are combined in single building or on a single site in an integral development project with significant functional interrelationships and a coherent physical design. A “single site” may include contiguous properties.

**Mobilehome:** A structure, transportable in one or more sections, built on a permanent chassis and designed for use as a single-family dwelling unit and that (1) has a minimum of 400 square feet of living space; (2) has a minimum width in excess of 102 inches; (3) is connected to all available permanent utilities; and (4) is tied down (a) to a permanent foundation on a lot either owned or leased by the homeowner or (b) is set on piers, with wheels removed and skirted, in a mobile home park. See Manufactured Housing and Modular Unit.

**Moderate-Income Household:** A household with an annual income between the lower income eligibility limits and 120 percent of the area median family income adjusted by household size, usually as established by the U.S. Department of Housing and Urban Development (HUD) for the Section 8 housing program. See Low-Income Household.

**Modular Unit:** A factory-fabricated, transportable building or major component designed for use by itself or for incorporation with similar units on-site into a structure for residential, commercial, educational, or industrial use. Differs from mobile homes and manufactured homes by (in addition to lacking an integral chassis or permanent hitch to allow future movement) being subject to California housing law design standards. California standards are more restrictive than Federal standards in some respects (e.g., plumbing and energy conservation). Also called Factory-built Housing and regulated by state law of that title. See Mobilehome and Manufactured Housing.

**Monthly Housing Costs:** The total of a homeowner's mortgage loan payment and expenses for utilities, general home repair and upkeep.

**Monthly Payment:** The total monthly payment made by the mortgagor each month.

**Mortgage:** A legal document that pledges a property to the lender as security for payment of a debt.

**Mortgage Agreement:** A conveyance of an interest in real property given as security for the payment of an obligation. Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt.

**Mortgage Banker:** A firm or individual active in the field of mortgage banking. Mortgage bankers, as local representatives of regional or national institutional lenders, act as correspondents between lenders and borrowers.

**Mortgage Banking:** The packaging of mortgage loans secured by real property to be sold to a permanent investor with servicing retained for the life of the loan for a fee. The origination, sale, and servicing of mortgage loans by a firm or individual. The investor-correspondent system is the foundation of the mortgage banking industry.

**Mortgage Broker:** A firm or individual bringing the borrower and lender together and receiving a commission. A mortgage broker does not retain servicing.

**Mortgage Discount:** The difference between the principal amount of a mortgage and the amount it actually sells for. Sometimes called points, loan brokerage fee or new loan fee. The discount is computed on the amount of the loan.

**Mortgage Insurance (MI):** Either a private company or a government agency which insures a mortgage lender against loss caused by a mortgagor's default. This insurance may cover part or the entire mortgage loan depending on the type of insurance. See Private Mortgage Insurance.

**Mortgage Insurance Premium (MIP):** The fee paid by a borrower to FHA or a private insurer for mortgage insurance. This fee is paid in addition to the monthly mortgage payment. The consideration paid by a mortgagor for mortgage insurance either to FHA or a private mortgage insurance company. See also Private Mortgage Insurance.

**Mortgage Interest Rate:** The rate of interest in effect for the monthly installment due. For fixed rate mortgages or for the adjustable-rate mortgages that have an initial fixed-rate period, it is the

rate in effect during the period. For adjustable rate mortgages after any initial fixed-rate period, it is the sum of the applicable index and the mortgage margin.

**Mortgage Note:** A written promise to pay a sum of money at a stated interest during a specific term. It is secured by a mortgage. A legal document obligating a borrower to repay a loan at a stated interest rate during a specified period of time; the agreement is secured by a mortgage. See also Promissory Note.

**Mortgage Program Pricing (MPP):** A secondary marketing program which includes Servicing Release premium and discount Reduction Expense.

**Mortgagee:** The lender in a mortgage agreement.

**Mortgagor:** The borrower in a mortgage agreement.

**Multifamily Housing Program (MHP):** A California program that provides low-interest loans to affordable housing developers.

**Multi-Family Residential:** Commonly called “multifamily housing.” A type of housing that has several units in one or more structures on a parcel of land. Examples of multiple-family residential housing include duplexes, fourplexes, condominiums and apartments.

**Multiple Listing Service (MLS):** An organization of member brokers agreeing to share listing information and commissions.

## N

**National Environmental Policy Act (NEPA):** An act passed in 1974 establishing a federal legislation for the national environmental policy, a council on environmental quality, and the requirements for environmental impact statements.

**Need:** A condition requiring supply or relief. A city or county may act upon findings of need within or on behalf of a community.

**Negative Amortization:** Payment terms under which the borrower's monthly payments do not cover the interest due. As a result, the interest is added to the principal loan balance increasing the amount to be paid at maturity.

**Negative Declaration:** When a project is not exempt from CEQA and will not have a significant effect upon the environment a negative declaration must be written. The negative declaration is

an informational document describing the reasons why the project will not have a significant effect and proposing measures to mitigate or avoid any possible effects.

**Noise Element:** One of seven state-mandated elements of a local general plan, it assesses noise levels of highways and freeways, local arterials, railheads, airports, local industrial plants and other ground stationary sources, and adopts goals policies and implementation programs to reduce the communities exposure to noise.

**Non-conforming Use:** A use that was valid when brought into existence, but by subsequent regulation becomes no longer conforming. "Non-conforming use" is a generic term and includes 1) non-conforming structures (by virtue of size, type of construction, location of land, or proximity to other structures), 2) non-conforming use of a conforming building, 3) non-conforming use of a non-conforming building, 4) non-conforming use of land. Thus, any use lawfully existing on any piece of property that is inconsistent with a new or amended General Plan, and that in turn is a violation of a zoning ordinance amendment subsequently adopted in conformance with the General Plan, will be a non-conforming use. Typically, non-conforming uses are permitted to continue for a designated period of time, subject to certain restrictions.

**Non-traditional Credit History:** A record of credit performance shown with receipts and bill and check stubs from payments to landlords, utility companies, child-care providers and others. A method for loan applicants who do not have a credit history based on car loans, credit cards or other traditional types of credit.

**Note:** A document on which a borrower promises to repay a loan. See also Promissory Note.

**Notice of Default:** A formal written notice to a borrower that a default has occurred and that legal action may be taken.

**Notice of Hearing:** A legal document announcing the opportunity for the public to present its views to an official representative or board, of a public agency, concerning an official action pending before the agency.

## O

**Offer to purchase:** A purchase proposal to the seller of a house. The offer describes the amount of money the buyer would pay for the house and other conditions that must be met before the house would be purchased.

**Office of the Comptroller of the Currency:** Charters, regulates and supervises national banks to ensure a safe, sound and competitive banking system that supports the citizens, communities and economy of the U.S.

**Office of Planning and Research (OPR):** Formerly FHLBB.

**Office of Thrift Supervision (OTS):** A bureau of the U.S. Department of the Treasury, estab. 1989. It is the primary regulator of all federally chartered (also some state-chartered) thrift institutions including savings banks and savings & loans associations. Funded by assessments and fees levied on the regulated institutions.

**Open Space Element:** One or the seven state-mandated elements of a general plan, it contains an inventory of privately and publicly owned open-space lands, and adopted goals, policies and implementation programs for the preservation, protection and management of open space lands.

**Ordinance:** A law or regulation set forth and adopted by, a governmental authority, usually a city or county.

**Origination:** The process that a lender goes through to get complete and correct information about a loan applicant's income and credit.

**Origination Fee:** A fee paid to a lender for processing a loan application; it is stated as a percentage of the mortgage amount or points.

**Overlay/Overlay Zone:** A land use designation on the Land Use Map, or a zoning designation on a zoning map, that modifies the basic underlying designation in some specific manner, such as steep slopes, earthquake faults or historic preservation districts. Development of land subject to overlay zoning requires compliance with the regulations of both the base and the overlay zones.

**Owners' Association:** A non-profit corporation or association that manages the common areas of a PUD or condominium project. In a condo project it has no ownership interest in the common areas. In a PUD, it holds title to the common areas.

**Owner-occupant:** An individual who resides in the mortgaged premises using it as a primary residence.

**Owner Financing:** A purchase in which the seller provides all or part of the financing.

## P

**Parcel:** A lot, or contiguous group of lots, in a single ownership or under single control, usually considered a unit for purposes of development.

**Parcel Map:** A minor subdivision resulting in fewer than five lots. The city or county may approve a parcel map when it meets the requirements of the general plan and all applicable ordinances. The regulations governing the filing and processing of parcel maps are found in the state Subdivision Map Act and the local subdivision ordinances.

**Parking Ratio:** The number of parking spaces provided per 1,000 square feet of floor area, e.g., 2:1 or “two per thousand.”

**Payment Cap:** A provision of some ARMs limiting how much a borrower's payments may increase regardless of how much the interest rate increases. This may result in negative amortization.

**Per Diem Interest:** See Daily Interest.

**Planned Unit Development (PUD):** A real estate project in which owners hold title to a residential lot and unit and a nonexclusive easement on the common areas of the project. The owner may have an exclusive easement over some parts of the common areas (such as parking space). See also Homeowner's Association.

**Planning and Research, Office of (OPR):** A governmental division of the State of California that has among its responsibilities the preparation of a set of guidelines for the use by local jurisdictions in drafting the General Plan.

**Planning Area:** The Planning Area is the land area addressed by a General Plan. For a city, the Planning Area boundary typically coincides with the Sphere of Influence that encompasses land both within the city limits and potentially annexable land.

**Planning Commission:** A body, usually having 5-7 members, created by a city or county, in compliance with the California law (Section 65100) that requires the assignment of the planning functions of the city or county to a planning department, planning commission, hearing officers, and/or legislative body itself, as deemed appropriate by the legislative body.

**Point or Points:** A one-time charge the lender adds to a mortgage loan. An amount equal to 1% of the principal amount of an investment or note. Loan discount points are a one-time charge

assessed at closing by the lender to increase the yield on the mortgage loan to a competitive position with other types of investment.

**Poverty Level:** As used by the U.S. Census, families and unrelated individuals are classified as being above or below the poverty level based on a poverty index that provides a range of income cutoffs or “poverty thresholds” varying by size of family, number of children, and age of householder. The income cutoffs are updated each year to reflect the change in the consumer Index.

**Predevelopment Loan Program (PDLP):** Under the State Department of Housing and Community Development (HCD), provides predevelopment capital to finance the start of low-income housing projects.

**Prepayment Penalty:** A fee charged by a lender for permitting a borrower to repay the loan early.

**Pre-qualification:** The process of determining how much money a prospective homebuyer will be eligible to borrow before a loan is applied for.

**Principal Balance:** The outstanding balance of a loan, exclusive of interest or any other charges.

**Principal, Interest, Taxes and Insurance (PITI):** The four components of a mortgage payment.

**Private Mortgage Insurance (PMI):** Insurance that protects a lender from loss caused by the default of the borrower. An insurance contract written by a private corporation that protects a portion of the loan to the mortgagee against losses that might occur in the event of the default and/or foreclosure on a conventional loan. See also Mortgage Insurance Premium.

**Probate Sale:** A sale held to sell property, including houses, owned by a deceased individual.

**Project Area:** The area which is designated in the Redevelopment Plan for redevelopment activities to take place.

**Promissory Note:** A written promise of a person (maker) to pay a specified sum of money to another person (payee) in accordance with terms and conditions agreed upon by the parties. See Mortgage Note.

**Property Inspection:** The examination of a house by a licensed inspector to see if its structure is sound and if its mechanical systems, such as plumbing and heating, are working.

**Property Tax:** The amount which a property owner pays to a taxing agency. The tax is calculated by multiplying the assessed value of the property by the tax rate.



**Public Housing Agency (PHA):** Any state, county, municipality, or other governmental entity or public body authorized under state enabling legislation to engage in the development or administration of low-rent public housing or slum clearance.

**Purchase and Sale Agreement:** A written contract signed by the buyer and seller stating the terms and conditions under which a property will be sold.

**Purchase-Money Mortgage:** A mortgage given by a purchaser of real property to the seller as part of the consideration in the sales transaction. This is the most commonly used land purchase, with prior right over any subsequent lien, unless made subject to subordination.

## Q

**Qualifying Ratios:** Guidelines applied by lenders to determine how large a loan to grant a homebuyer.

**Quit-Claim Deed:** A deed that transfers only such interest, title or right of grantor that said grantor may have at the time the conveyance is executed.

## R

**Radon:** A radioactive gas found in some homes that in sufficient concentrations can cause health problems.

**Rate-Lock:** See Lock-in.

**Real Estate Agent:** A person licensed to negotiate and transact the sale of real estate on behalf of the owner.

**Real Estate Settlement Procedures Act (RESPA):** A consumer protection law that requires lenders to give borrowers advance notice of closing costs. A federal law that requires lenders to provide home mortgage borrowers with information of known or estimated settlement costs. It limits the amount lenders may require to be held in escrow and requires disclosure of known settlement cost of both buyers and sellers by the person conducting the settlement and outlaws certain referral fees.

**Real Property:** Land and appurtenances, including anything of a permanent nature such as structures, trees, minerals, and the interest, benefits and inherent rights thereof.

**Realtor:** A real estate broker or associate holding the active membership in a local real estate board affiliated with the National Association of Realtors.

**Realty:** A brief term for real property and the business involved in buying and selling real property.

**Recording:** The noting of the register's office of the details of a properly executed legal document, such as a deed, mortgage, a satisfaction of a mortgage or an extension of mortgage, thereby making it a part of the public record.

**Redevelop:** To demolish existing buildings; or to increase the overall floor area existing on a property, or both; irrespective of whether a change occurs in land use.

**Redevelopment:** Planning, development, re-planning, redesign, clearance, reconstruction or rehabilitation of the project area.

**Redevelopment Agency (RDA):** Public body created to, among other things, designate redevelopment areas, supervise and coordinate planning for a Project Area and implement a redevelopment program.

**Redevelopment Project Area:** A defined area designated for redevelopment activities. See also Redevelopment Plan.

**Redevelopment Plan:** A document that outlines a process and a basic framework within which specific redevelopment projects and/or programs will be undertaken by the Redevelopment Agency over the period of time the plan is effective.

**Redlining:** The alleged identification, by some lenders, of specific geographic, areas for the purpose of denying real estate loans or varying lending terms on a discriminatory basis.

**References:** Statements about a person's qualifications, character and dependability.

**Referendum:** A ballot measure challenging a legislative action by the city council or county board of supervisors. Referenda petitions must be filed before the action becomes final and may lead to an election on the matter. The California Constitution guarantees the right to referendum.

**Refinance/Refinance Transaction:** The process of paying off one loan with the proceeds from a new loan secured by the same property.

**Regional Housing Needs Plan (RHNA):** A qualification by a COG or HCD of existing and projected housing need, by household income group, for all localities within a region.

**Rehabilitation:** The repair, preservation and/or improvement of substandard housing. To rebuild an existing house or building, to make the space more livable or usable and more valuable. Commonly referred to as “rehab.”

**Remodeling:** To rebuild and improve a house or building, often changing its “model” or layout or adding rooms. Rent with Option to Buy: See Lease-Purchase Mortgage Loan.

**Repossess:** To take back a property, such as a car, when the borrower or owner does not make payments due on the property. This is done by a lender or seller.

**Residential:** Land designated in the city or county General Plan and zoning ordinances for building consisting of dwelling units. May be improved, vacant or unimproved. See Dwelling Unit.

**Residential, Multiple Family:** Usually three or more dwelling units, in the same separate or buildings, on a single site.

**Residential, Single Family:** A single dwelling unit on a building site.

**Restriction:** A legal limitation upon the use of real property.

**Rezoning:** An amendment to the map and/or text of a zoning ordinance to effect a change in the nature, density or intensity of uses allowed in a zoning district and/or on a designated parcel of land area.

**Rural Development:** See USDA Rural Development.

**Rural Housing Service (RHS):** See Farmers Home Administration.

## S

**Safety Element:** One of the seven state-mandated elements of a local general plan, it contains adopted goals, policies, and implementation programs for the protection of the community from any unreasonable risks associated with seismic and geologic hazards, flooding and wild-land and urban fires. Many safety elements also incorporate a review of police needs, objectives, facilities and services.

**School Impact Fees:** Proposition 13 put a limit on property taxes and thereby limited the main source of funding for new school facilities. California law allows school districts to impose fees on new developments to offset their impacts on area schools.

**Secondary Financing:** Financing real estate with a loan, or loans, subordinate to a first mortgage or first trust deed.

**Secondary Mortgage Market:** A system where existing mortgages are bought and sold, contrasted with the primary mortgage market where mortgages are originated. See also Fannie Mae and Freddie Mac.

**Second Mortgage:** A mortgage that has rights subordinate to the rights of the first mortgage holder; evidences the pledge of real estate security as distinguished from the note or other credit instrument.

**Second Mortgage Program:** The lending by a private or public agency of a portion of a required down payment to a developer or first-time homebuyer, usually with the restrictions requiring that units assisted through the program remain affordable to very low- and low- income households.

**Second Unit:** A self-contained second dwelling attached to, or separate from, the main residence, housing one or more elderly persons. California Government Code 65852.1 enables cities and counties to approve such units in single-family neighborhoods. Sometimes called "Granny Flat" or "Granny Housing."

**Section 8 Rental Assistance Program:** A federal (HUD) rent-subsidy program that is one of the main sources of federal housing assistance for low-income households. The program operates by providing "housing assistance payments" to owners, developers, and public housing agencies to make up the difference between the "Fair Market Rent" of a unit (set by HUD) and the household's contribution toward the rent, which is calculated at 30% of the household's adjusted gross monthly income. (GMI). "Section 8" includes programs for new construction, existing housing, and substantial or moderate housing rehabilitation.

**Security:** See Collateral.

**Seller Take-Back or Seller Carry-Back:** An agreement in which the owner of a property provides financing, often in combination with an assumed mortgage.

**Semi-detached house:** A house that is attached to another property, such as a duplex or townhouse.

**Senior Housing:** See Elderly Housing.

**Setback:** a minimum distance required by zoning to be maintained between two structures or between a structure and property lines.

**Settlement:** See Closing.

**Settlement Attorney:** A lawyer who organizes the closing on a house sale, by preparing necessary papers, paying fees, and conducting the settlement meeting between seller and buyer.

**Settlement Costs:** See Closing Costs.

**Settlement Sheet or Statement:** The computation of costs payable at closing which determines the seller's net proceeds and the buyer's net payment. Also known as HUD-1.

**Single Family Dwelling, Attached:** A dwelling unit or intended for occupancy by only one household that is structurally connected with at least one other such dwelling unit. See Townhouse.

**Single Family Dwelling, Detached:** A dwelling unit occupied, or intended to be occupied, by only one household that is structurally independent from any other such dwelling unit or structure intended for residential or other use.

**Single Room Occupancy (SRO):** A single room, typically 80-250 square feet, with a sink and closet, but that requires the occupant to share a communal bathroom, shower and kitchen.

**Site:** The location of a particular parcel of land.

**Soft Costs:** Architectural, engineering and legal fees as distinguished from land and construction costs.

**Specific Plan:** Under Article 8 of the Government Code (Section 65450 *et seq.*), a legal tool for detailed design and implementation of a defined portion of the area covered by a General Plan. A specific plan may include all detailed regulations, conditions, programs and/or proposed legislation that may be necessary or convenient for the systematic implementation of any General Plan elements.

**Specifications:** A detailed description of the size, shape, materials and other details of a building or remodeling project.

**Sphere of Influence:** The probable ultimate physical boundaries and service area of a local agency (city or district) as determined by the Local Agency Formation commission (LAFCo) of the county.

**Subcontractor:** A specialized contractor, such as a plumber or sheet-rocker hired by a general contractor.

**Subdivision:** The division of a tract of land into defined lots, either improved or unimproved, which can be separately conveyed by sale or lease, and which can be altered or developed. "Subdivision" includes a condominium project as defined in Section 1350 of the California Civil Code and a community apartment project as defined in Section 11004 of the Business and Professional Code.

**Subdivision Map Act:** Division 2 (Section 66410 *et seq.*) of the California Government code, this act vests in local legislative bodies the regulation and control of the design and improvement of subdivisions, including the requirement for tentative and final maps. See Subdivision.

**Subordination:** The act of a party acknowledging, by written recorded instrument, that a debt is inferior to the interest of another in the same property.

**Subsidized Second Mortgage:** An alternative financing option for low and moderate-income households that also include a down payment and a first mortgage, with funds for the second mortgage provided by city, county, or state housing agencies, foundations, or nonprofit corporations. Payment on the second mortgage is often deferred, carries no or low interest rates, and part of the debt may be forgiven for each year the family remains in the home.

**Substandard Housing:** Residential dwellings that, because of their physical condition, do not provide safe and sanitary housing.

**Substantial Improvement:** Reconstruction, restoration, addition or other improvement to structure, the total cost of which equals or exceeds 50% of the market value of the structure before the start of construction or improvement.

**Survey:** A drawing or map showing a property's boundaries, any places the property may have been improved or changed, rights of way, and other physical features. See also Surveyor.

**Survey Area:** That area found by the legislative body to qualify for redevelopment study purposes. A Redevelopment Project Area must be formed within a survey area.

**Surveyor:** A professional who checks the boundaries of a property.

**Sustainability:** Focuses on providing the best outcomes for human and natural environments, now and into the indefinite future.

**Sustainable Development:** Continuity of economic, social, institutional and environmental aspects of human society, as well as non-human environment.

## T

**Tax Allocation Bond:** A bond or financial obligation issued by the Redevelopment Agency in order to generate revenues to implement the redevelopment plan. The bond is repaid with tax increments flowing to the agency as a result of the agency's revitalization of the project area.

**Tax Assessor:** A government employee who determines a property value for tax purposes.

**Tax Credit:** A dollar amount that may be subtracted from the amount of taxes owed.

**Tax Credit Allocation Committee (TCAC):** Administers two low-income housing tax-credit programs---a Federal and a state.

**Tax Increment:** Additional tax revenues that result from increases in property values within a developmental area. State law permits the tax increment to be earmarked for redevelopment purpose, but requires at least 20% to be used to increase and improve the community's supply of very-low and low-income housing.

**Tax Increment Financing:** Method of financing redevelopment through incremental tax revenues from other taxing agencies to the redevelopment agency for specific time period.

**Taxing Agency:** Any city, county, school district or special district which assesses taxes to raise revenue.

**Tenancy:** A holding of real estate under any kind of right of title. Used alone, the word implies a holding under a lease.

**Tenancy at Will:** A holding of real estate that can be terminated at the will of either the lessor or the lessee, usually with notice.

**Tenancy by Entirety:** A type of joint ownership of property available only to a husband and wife.

**Tenancy in Common:** In law, the type of tenancy or estate created when real or personal property is granted, devised or bequeathed to two or more persons in the absence of words creating a joint tenancy. There is no right of survivorship.

**Tentative Map:** The map or drawing illustrating a subdivision proposal. The city or county will approve or deny the proposed subdivision based upon the design depicted by the tentative map. A subdivision is not complete until the conditions of approval imposed upon the tentative map

have been satisfied and a final map has been certified by the city or county and recorded with the county recorder.

**Term:** The length of time in which a loan is to be repaid. A 30-year mortgage loan has a 30 year term.

**Terms:** All conditions placed on a loan, including the interest rate, any finance charge, and the length of the loan.

**Three/two (3/2) option:** An alternative financing plan that enables households whose earnings are no more than 115% of the median income in their regional area, to make a 3% down payment with their own funds, coupled with a 2% gift from a relative or a 2% grant or unsecured loan from a nonprofit or state or local government program.

**Title:** The evidence of the right to ownership in property. In the case of real estate, the documentary evidence of ownership is the title deed which specifies in whom the legal estate is vested and the history of ownership and transfer. Title may be acquired through purchase, inheritance and gift or through foreclosure of a mortgage.

**Title Company:** A company that specializes in insuring title to property.

**Title Insurance:** Insurance that compensates the insured a specific amount for any loss caused by defects of title to real estate.

**Title Insurance Policy:** A contract by which the insurer, usually a title insurance company, agrees to pay the insured a specific amount for any loss caused by defects of title to real estate, wherein the insured has an interest as purchaser, mortgagee or otherwise.

**Title Search:** An examination of public records, laws and court decisions to disclose the past and current facts regarding ownership of real estate.

**Total Monthly Debt:** The total amount of credit card, car loan, and other debt payments a person must pay each month. Used to figure out debt-to-income ratios.

**Total Monthly Income:** The amount of money that comes into a household every month from a job or jobs, interest or dividends, alimony, disability payments, and public assistance. A lender uses the total monthly income figure to decide how much house payment a loan applicant can afford. See also Gross Monthly Income.



**Townhouse:** A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common and fire-resistant walls. Townhouses usually have separate utilities; however, in some condominium situations, common areas are serviced by utilities purchased by a homeowners association on behalf of all townhouse members of the association. See Condominium.

**Tract Map:** See Final Map Subdivision.

**Transfer tax:** State or local tax payable when title passes from one owner to another.

**Transitional Housing:** Shelter provided to the homeless for an extended period, often as long as 18 months, and generally integrated with other social services and counseling programs to assist in the transition to self-sufficiency through the acquisition of a stable income and permanent housing. See Homeless and Emergency Shelter.

**Transit Oriented Development (TOD):** A mixed-use residential or commercial area designed to maximize access to public transport, and often incorporates features to encourage transit ridership. Generally located within a radius of ¼ to ½ mile from a transit stop, a distance considered appropriate for pedestrians.

**Trustor:** Term used for the borrower on a Deed of Trust.

**Truth in Lending Act:** A federal law that requires lenders to provide complete and correct information, in writing, about how much a borrower owes when payments are due and how much they are, and what interest rates and other charges are.

## U

**U.S. Department of Housing and Urban Development (HUD):** A federal government agency responsible for managing many of the nation's housing programs and for protecting rights of homebuyers, homeowners, sellers, and renters.

**U.S. Department of Veterans Affairs (VA):** A federal government agency responsible for programs for former members of the armed services.

**Underwriting:** The analysis of risk and the matching of it to an appropriate rate and term.

**Undevelopable:** Specific areas where topographic and/or surficial soil conditions indicate a significant danger to future occupants and a liability to the city or county are designated as “undevelopable” by that city or county.

**Uniform Building Code (UBC):** A national, standard building code that sets forth minimum standards for construction.

**Uniform Housing Code (UHC):** State house regulations governing the condition of habitable structures with regard to health and safety standards, and which provide for the conservation and rehabilitation of housing in accordance with the Uniform Building Code.

**Urban Design:** The attempt to give form, in terms of both beauty and function, to selected urban areas or to whole cities. Urban design is concerned with the location, mass and design of various urban components and combines elements of urban planning, architecture and landscape architecture.

**Urban Growth Boundary (UGB):** A regional boundary set in an attempt to control urbanization by designating the area inside the boundary for higher density urban development and the area outside the boundary for lower density rural development.

**Urban sprawl:** Haphazard growth or outward extension of a city resulting from uncontrolled or poorly managed development.

**Unsecured credit:** Any credit that is not secured by property such as a house. A credit card is unsecured credit; a mortgage loan is secured.

**USDA Rural Development (USDA RD):** United States Department of Agriculture's Rural Development helps families purchase first homes, builds critical infrastructure in rural areas, helps rural entrepreneurs to start and grow their own businesses and improves viability of rural economies.

**Use Permit:** The discretionary and conditional review of an activity or function or operation on a site in a building or facility.

**Utility Reimbursement:** The cost of utilities as determined by the local Public Housing Authority or HUD.

## V

**Vacant:** Lands or buildings that are not actively used for any purpose.

**Variance:** A departure from any provision of the zoning requirements for specific parcel, except use, without changing the zoning ordinance or the underlying zoning of the parcel. A variance usually is granted only upon demonstration of hardship based on the peculiarity of the property in relation to other properties in the same zone district.

**Very-Low Income Household:** A household with an annual income no greater than 50% of the area median family income adjusted by household size, as determined by a survey of incomes conducted by a city or county, or in the absence of such a survey, based on the latest available eligibility limits established by the U.S. Department of Housing and Urban Development (HUD) for the Section 8 housing program.

**Veterans' Administration (VA):** An independent agency of the federal government created in 1930. The Servicemen's Readjustment Act of 1944 authorized the agency to administer a variety of benefit programs designed to facilitate the adjustment of returning veterans to civilian life. The VA home loan guaranty program is designed to encourage lenders to offer long term, low down payment mortgages to eligible veterans by guaranteeing the lender against loss.

**Veterans Administration (VA) Loan:** A loan that is guaranteed by the Veterans Administration.

**Verification:** The process of making sure or verifying that all of a borrower's loan application information is accurate.

## W

**Warranty:** A guarantee by a seller or manufacturer that a product is what it is claimed to be, that it is in working order, and, in some cases, that the seller or maker will repair the product.

**Wiring Diagram:** A diagram of the electrical wiring in a house, showing where all the circuits and plugs are.

## Z

**Zoning:** The division of a city or county by legislative regulations into areas, or “zone,” which specify allowable uses for real property and size restrictions for buildings within these areas; a program that implements policies of the General Plan.

**Zoning Administrator:** A planning department staff member responsible for hearing minor zoning permits. Typically, the zoning administrator considers variances and conditional use permits and may interpret the provisions of the zoning ordinance when questions arise. His/her decisions may be appealed to the local legislative body.

**Zoning District:** A designated section of a city or county for which prescribed land use requirements and building and development standards are uniform.

**Zoning, Exclusionary:** When a community fails to accommodate, through its zoning laws, the provision of affordable types of housing needed to meet proven regional housing need, that community is said to be practicing exclusionary zoning.

**Zoning Map:** Map that shows locality divided into districts and shows status and usage of each district and is kept current.