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Community and Economic Development Agency  
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*September 4, 2009*

**2009 NOFA**  
**NOTICE OF FUNDING AVAILABILITY**  
**FOR PRESERVATION AND REHABILITATION**  
**OF EXISTING AFFORDABLE RENTAL HOUSING**

**CITY OF OAKLAND  
COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY**

**NOTICE OF FUNDING AVAILABILITY (NOFA)- PRESERVATION AND  
REHABILITATION OF EXISTING AFFORDABLE RENTAL HOUSING**

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The Community and Economic Development Agency (CEDA), on behalf of the City of Oakland and the Oakland Redevelopment Agency, is pleased to announce that it is accepting loan applications to preserve and rehabilitate existing affordable rental housing developments.

Approximately \$4 to \$8 million is expected to be available from two sources: HOME funds and Oakland Redevelopment Agency affordable housing funds.

Note that the state of California's budget take of redevelopment funds may result in a significantly decreased amount of Redevelopment Agency affordable housing funds this year. As of the date of publication of this NOFA, the full impact on housing funds is not yet determined. Please check Oakland's Housing and Community Development website for updates.

Also note that Redevelopment Agency affordable housing funds cannot be spent this year on senior housing. HOME funds (of approximately \$4 million) may be available for senior housing projects.

This NOFA is intended to facilitate emergency repairs and capital improvements of non-profit owned affordable rental housing. Emergency repairs and capital improvements must relate to items that present an immediate threat to the health, safety, and habitability of the housing. Under limited circumstances, funds for refinancing of existing debt may also be provided in conjunction with emergency repair and capital improvement funding.

***APPLICANTS ARE ENCOURAGED TO CONTACT LESLIE MULLINS, HOUSING DEVELOPMENT COORDINATOR, AT (510) 238-6173 WITH QUESTIONS REGARDING PROGRAM REQUIREMENTS AND THE APPLICATION PROCESS.***

**NOFA PROCESS AND TIMELINE**

**Each sponsor will be permitted to submit only two project applications.** Exceptions are made for developers submitting applications for affordable rental properties in the Oakland Community Housing Inc. (OCHI) portfolio, in which case a total of three applications may be submitted. (This does not include applications submitted in response to the NOFA for Affordable Rental and Ownership Housing).

**Applications must be received at CEDA's office located at 250 Frank Ogawa Plaza, Suite 5313, no later than 4:00 p.m. on Thursday, October 22nd, 2009. Applications submitted after this deadline will not be accepted.**

Applicants are strongly encouraged to attend a meeting on the City's employment and contracting programs on **Thursday, October 1<sup>st</sup> at 10 a.m.** at City Hall, 2<sup>nd</sup> Floor, Hearing Room 4. There will be time available for general questions and answers on this NOFA.

**If the project is located in the Central City East, Broadway/MacArthur/San Pablo or West Oakland Redevelopment Areas, at least one presentation must be given to the Project Area Committee (PAC).** This will allow the PAC to provide informed advice to City Council for NOFA proposals. The City Council, acting as the Redevelopment Agency, must seek the advice of the PACs before making funding decisions. Applicants should contact Housing Development Coordinator, Leslie Mullins at (510) 238-6173 by September 14<sup>th</sup> to discuss scheduling a presentation at the earliest possible PAC meeting. Applicants must attend PAC meetings prior to December 31, 2009.

Applicants should review the entire NOFA package, as the application includes a certification that they will comply with all requirements. Prior to the application deadline, please check the City's Housing and Community Development website regularly for any updates, corrections, or posted questions and answers regarding this NOFA at <http://www.oaklandnet.com/government/hcd/>.

Applicants must submit **one original** complete *Application for Preservation and Rehabilitation Financing* with all required supporting materials. Applications should be in a three-ring binder, with numbered dividers that correspond with the *Preservation and Rehabilitation Financing Application Checklist*. The *Checklist* should be used as the Table of Contents for the application.

**Some materials must be submitted electronically.** These forms/templates may be obtained from CEDA upon request via email to [lmullins@oaklandnet.com](mailto:lmullins@oaklandnet.com) or downloaded from the City's website at <http://www.oaklandnet.com/government/hcd/>.

Once the staff review is complete, a staff report will be prepared for presentation, first to the City Council's Community and Economic Development Committee and then to the full City Council. Final funding approval by the City Council and Redevelopment Agency is expected in late February or early March 2010.

Once funding is approved, staff will draft loan documents for review by the developer and the City Attorney. All items required at this stage must be submitted and approved by the City before the loan can close. Rehabilitation may not start until the loan has been closed, and the City has issued a Notice to Proceed.

**Applications become public records:** Under the California Public Records Act and the City's Sunshine Ordinance, all documents that applicants submit in response to this NOFA are considered public records and will be made available to the public upon request following application review.

**The City of Oakland and Redevelopment Agency reserve the right to suspend, amend or modify the provisions of this NOFA, to reject all proposals, to negotiate modifications of proposals, or to award less than the full amount of funding available.**

*The City of Oakland and the Redevelopment Agency are Equal Housing Opportunity and Accessible Housing providers.*



## ***CHANGES AND NEW REQUIREMENTS IN THE 2009 NOFA***

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- 1. Limit on Application Submissions:** Each sponsor will be permitted only two project applications for this NOFA. Exceptions to this limit are provided only for sponsors submitting an application for a project previously owned by OCHI or an OCHI affiliate, in which case sponsors may submit a total of three applications. Projects requesting additional funds count as part of this cap. This cap does not include applications submitted in response to the NOFA for Affordable Rental and Ownership Housing.
- 2. Project Based Section 8 Not Available:** Oakland Housing Authority Project-Based Section 8 will not be available through the NOFA process this year due to a shortage of vouchers.
- 3. Redevelopment Funds Not Available for Senior Housing:** The Redevelopment Agency has exceeded its proportionality requirement for senior housing units. Therefore, Agency funds cannot be spent on senior housing projects this year. HOME funds (of approximately \$4 million) can still be used for senior housing projects.
- 4. Application Preparation:** Only one original application (rather than one original and one copy) is required this year to reduce our environmental impact. Please double-side large exhibits. Cover sheets in addition to the numbered tabs separating application exhibits are not necessary.
- 5. New/Significantly Revised Application Exhibits:**
  - Tenant Outreach Plan (new exhibit)
  - Rank/Prioritize Scope of Work (use new form provided)
  - Urgency of Need (use new form provided)
  - Reserve Analysis (new exhibit)
  - Rent Summary (revised)
  - Evidence of Outside Funding (new exhibit)

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**NOFA ADDENDA (See Separate Table of Contents)**

- #1: Minimum Developer Qualifications
- #2: Affirmative Fair Marketing Procedures
- #3: Income, Rent and Utility-Allowance

**APPLICATION FORM AND INSTRUCTIONS**

## ***Program Description and Underwriting Requirements***

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The City of Oakland and the Redevelopment Agency of the City of Oakland (City) provide financial assistance to developers of low and moderate income housing. These programs are administered by the Housing Development Services unit of the Community and Economic Development Agency (CEDA).

City/Agency requirements are generally consistent regardless of the original source of funding. However, for certain requirements, one source of funds may allow greater flexibility than others (e.g., Agency compared to HOME). Applicants should assume that federal requirements will apply. If the use of federal funds creates a significant feasibility problem, this should be explained in the application cover letter.

### **ELIGIBILITY**

#### **THRESHOLD ELIGIBILITY REQUIREMENTS**

Evidence that the following requirements have been satisfied must be submitted at the time of application.

- The affordable housing development seeking funds must have all of the following characteristics:
  - It must be owned and operated by a 501c(3) non-profit corporation or a limited partnership whose managing general partner is a 501c(3) non-profit corporation.
  - It must be currently providing permanent or transitional affordable housing.
  - The building must have been constructed at least 10 years ago AND cannot have undergone substantial rehabilitation within the last 10 years.
  - It must be currently restricted by a City/Agency Regulatory Agreement or Loan Agreement.
  - It must be serving households or individuals at or below 60% of area median income.
- The work to be performed must be necessary to maintain or prevent the loss of the habitability of the housing, to correct code deficiencies, or to replace building components or systems that require unreasonable and excessive maintenance and repair expenditures.

#### **ELIGIBLE ACTIVITIES**

The following are eligible uses of funds offered through this NOFA:

- Repairs or replacements of existing mechanical, plumbing, or electrical equipment to the extent that they are necessary for health and safety reasons. The purchase of high efficiency heating and cooling systems for the approved replacement equipment is encouraged to promote energy conservation.
- Architectural and engineering expenses.
- Temporary relocation expenses.
- Construction period insurance and permit fees associated with the rehabilitation work.
- Other necessary soft costs associated with the rehabilitation work.

- Refinancing of existing debt to eliminate operating deficits or maintain affordability.
- Replacement reserves and operating reserves if necessary to ensure the adequacy of such reserves to meet anticipated capital improvement needs. (See Application for replacement and operating reserves guidelines.)

#### **INELIGIBLE ACTIVITIES**

The following are ineligible uses of funds offered through this NOFA:

- Permanent relocation of residential and/or commercial tenants.
- Costs associated with construction items or materials of a luxury nature.
- Off-site improvements (however utility connections into the adjacent street are eligible costs).
- Developer/sponsor administrative costs (other than those included in the administrative fee).

For eligibility and other updates, please check the City of Oakland website:

[www.oaklandnet.com/government/hcd](http://www.oaklandnet.com/government/hcd)

#### **APPLICATION REVIEW**

All applications received by the deadline on **October 22, 2009** will first be reviewed for completeness and eligibility. They will then be evaluated and ranked for presentation to the City Council.

Qualifying applications will be reviewed for compliance with relevant City policies and for overall feasibility. Projects will then be ranked based on, but not limited to, the following evaluation criteria:

- The degree to which subsidy is requested below 100% of total development costs and the degree to which outside funding is utilized.
- The building's urgency of need, which will be determined according to factors such as the following:
  - Code violations subject to abatement orders or potential legal enforcement proceedings.
  - Current or imminent conditions that pose significant threats to health, safety or security of residents or staff as per the Physical Needs Assessment (PNA) results.
  - Existing major building and structural components that are in critical condition (e.g. structural collapse, fire damage, failure of elevators in a mid to high-rise, sewer back-up, gas leaks, broken water pipes, lack of heat, catastrophic leaks, broken-down boilers, etc).
- Project attributes such as age of the property, zero capitalized reserve request, and the submission of a comprehensive tenant outreach and/or relocation plan.
- The proven technical capacity and experience of the applicant either through staff or contracted services to plan and implement the proposed capital improvements and experience of the management company in managing affordable housing developments.

## **AFFORDABILITY TARGETING**

Upon completion of the rehabilitation (and refinancing if applicable) pursuant to this NOFA, all units shall keep the same level of affordability (or provide an even deeper level of subsidy to very low and extremely low income households) as required prior to the rehabilitation and/or refinancing. Furthermore, upon completion of any rehabilitation pursuant to this NOFA, the minimum term of affordability required will be 55 years. The 55 year term will begin after the rehabilitation has been completed.

## **FINANCING GUIDELINES**

### **FINANCIAL HARDSHIP**

The applicant must demonstrate that replacement reserves and other non-City sources of financing are insufficient, ineligible or unavailable for use on the project. A detailed narrative describing the lack of other sources must be included in the application cover letter.

### **MINIMUM AND MAXIMUM LOAN AMOUNTS**

- The maximum loan amount is up to \$120,000 per affordable unit per project.
- Applicants who previously received a NOFA award and are reapplying for additional funds are only eligible to apply for a total maximum of \$120,000 per unit per project.
- The minimum loan amount is \$200,000 per project.
- The City loan amount may be up to one hundred percent (100%) of the total development cost of the project's affordable units (those units subject to long term affordability restrictions) as long as the development cost does not exceed the per unit maximum amount.
- Requested loan amounts must be rounded to \$1,000 increments.
- All loan amounts are subject to review.
- Other sources of appropriate financing must be identified, but not necessarily committed, at the time of application. Projects will be reviewed to ensure that only the minimum level of City subsidy needed will be provided. All other sources of funding must be committed before closing of the City loan.

### **ADMINISTRATION FEE**

Administrative fees are permitted up to \$5,000 per unit and up to \$150,000 per project. Applicants who previously received a NOFA award and are reapplying for additional funds are only eligible to request a total maximum administration fee of \$150,000 per project.

### **REASONABLE DEVELOPMENT COSTS**

Projects with abnormally high costs – generally defined as being more than 15% above the median total development cost per bedroom or per square foot for similar rehabilitation projects – must provide justification for the costs. If staff does not approve the justification for higher costs or the revised budget, the application may be deemed incomplete or the City could require a reduction in the development budget.

Due to the limited funding available, applicants may be requested to reduce their scope of work and limit their total development cost to only the most immediate and urgent items.

### **CONSTRUCTION CONTINGENCY**

A **minimum** of 15% construction cost contingency for rehabilitation projects is required at the time of loan closing. A 20% construction contingency at the time of application is recommended.

### **REFINANCING LOANS**

For refinancing in conjunction with emergency repair and capital improvements funding, the following threshold requirements apply:

- The applicant must provide a detailed narrative that describes the need for refinancing in order to eliminate operating deficits and/or to increase or maintain the affordability of the housing to be refinanced with respect to its targeted population.
- The applicant must demonstrate that concessions from lenders whose loans would be refinanced, such as interest rate reductions, deferrals or partial forgiveness, are unavailable or insufficient to address the need for refinancing. A letter from lender demonstrating an unwillingness to make concessions is sufficient evidence.
- The applicant must demonstrate that other alternatives to refinancing, such as modifying management practices to reduce expenditures or raising rents to increase revenues are inappropriate, insufficient or unavailable to address the need for refinancing. If inappropriate management practices such as disinvestment in the property are found to be contributing to an operating deficit, a change in management may be required as a condition of funding under this NOFA.

### **GENERAL LOAN TERMS**

If loan terms other than those listed below are sought for a project, this must be explicitly stated in the cover letter and a separate explanation provided in the application. Such requests are granted at the sole discretion of the City.

### **TIMELINE OF CITY/AGENCY COMMITMENTS & MONTHLY UPDATES**

City financing commitments are made for 24 months from date of City Council approval. All sources of funds must be committed within that time frame or the commitment will expire.

Upon commitment of funds from the City, the borrower must provide written monthly updates to City staff. Monthly updates will allow City staff to anticipate upcoming approvals needed and to stay informed about efforts to move the project forward on schedule.

### **SUBORDINATION**

The City will no longer subordinate its affordability covenants to the deeds of trust securing other lenders' financing, except in extraordinary circumstances. The

affordability covenants control, among other things, the maximum income of tenants of project units, and the maximum rents allowed for project units. The City and Agency deeds of trust may be subordinated to private financing on a case-by-case basis.

### **LOAN TERMS**

Loans are typically provided at a simple interest rate of three percent (3%) per annum, for a term of fifty-five (55) years. Payments of interest and principal will be due from excess cash flow from operations after payment of operating costs, senior debt and reserves. To the extent payments cannot be made, they will be deferred for the term of the loan. All loans are due on sale, refinancing, or transfer (except to a related entity, such as a limited partnership, subject to City approval).

City loans will be evidenced by a promissory note secured by a deed of trust and recorded against the land and improvements for the project. A loan agreement will specify all development obligations. Post-occupancy use restrictions will be enforced through a regulatory agreement recorded against the land and improvements of the project. The minimum term for affordability restrictions is 55 years. If an existing City loan is already in place for a project, it may be consolidated with the new rehabilitation loan.

### **DISBURSEMENT OF FUNDS**

Funds will be disbursed to borrower only for costs actually incurred. Payment for construction costs will be made on a progress payment basis, subject to approval of each draw request by the City. The City will retain ten percent (10%) of the amount budgeted for construction hard costs as a performance retention, to be released upon recordation of a Notice of Completion, release of all liens, and satisfactory compliance with any other City requirements, including City contracting programs. Additionally, the City will retain an amount equal to 15% of the administrative fee to be paid upon receipt and approval of a cost certification.

### **PRESERVATION PROJECTS**

Applicants seeking to preserve existing affordable housing in danger of conversion to market-rate rents as a result of the non-renewal of expiring federal subsidies or tax credits must show that the project will remain financially feasible, with all income and rent restrictions met, throughout the term of the regulatory agreement. If a rental or operating subsidy is currently part of the financing plan, applicants must show that the project will still be feasible if that rental or operating subsidy contract is not renewed.

### **OPERATING BUDGET**

Operating budgets and 30-year proformas must meet the following criteria:

- Include operating and replacement reserves (See Replacement and Operating Reserve Requirements below).
- 5% annual vacancy/collection loss for family, senior, and preservation projects and 10% annual vacancy/collection loss for SRO or special needs projects.
- 3.5% annual increase for expenses (other than property taxes and replacement reserves deposits) and 2.5% annual increase for income.
- The operating budget will be reviewed to ensure it is sufficient for proper maintenance and management but is not excessive compared to other similar

properties. The Affordable Housing Cost Database is a useful resource of the Bay Area Local Initiatives Support Corporation (LISC) at <http://www.cdexchange.org/>.

- If the project has Project Based Section 8 or other rental assistance, two operating proformas must be provided, one assuming rental assistance will be renewed and one assuming rental assistance will expire after the initial contract term. Rents must remain restricted according to City requirements even if the rental assistance is no longer available.

### **CASH FLOW/INCENTIVE MANAGEMENT FEE**

For nonprofits, if a project has no monitoring findings or other violations of City or other agreements, and reserves are fully funded, excess cash flow (after payment of operating costs, reserves, senior debt, deferred developer fee, and partnership/asset management fee) will be split between the developer and the City/Agency, with 50% of excess cash flow paid to the City/Agency as a residual receipts loan payment and 50% for the borrower as an Incentive Management Fee. This fee shall be used for projects and activities contributing directly to the developer's (or its affiliate's) affordable housing programs and community development activities.

### **REPLACEMENT AND OPERATING RESERVE REQUIREMENTS**

City financing and regulatory requirements are generally in place far longer than other financing sources. As a result, the owner's ability to maintain and repair the project over the long term is extremely important to the City. Exceptions to the stated requirements will be granted in rare cases only. Use of replacement and operating reserves is subject to prior review and approval by the City.

- **Replacement Reserves**

Developers will be required to submit a third party replacement cost analysis in which the lifecycle and cost of major building systems is estimated and amortized over the number of units and years. Replacement reserve amounts will be reviewed and approved by the City. The City reserves the right to request a replacement reserve analysis every 5 years.

- **Operating Reserves**

Initial operating reserve of at least 2% of the gross rental income must be capitalized on a monthly basis until the reserve reaches an amount equal to six months operating costs (including debt service costs). The operating reserve must be maintained at the level of six months of operating costs for the period during which the property is regulated by the City regulatory agreements.

### **OTHER GUIDELINES AND CITY REQUIREMENTS**

#### **SITE CONTROL**

At the time a development proposal is submitted, the developer must demonstrate that it has, or will maintain, site control of the property for which funding is being requested. Alternative site control documents may be accepted for properties in the OCHI rental portfolio and will be evaluated by staff on a case by case basis.

### **PRE-APPLICATION MEETING WITH BUILDING DEPARTMENT**

Applicants are required to meet with the Engineer of the Day in the Building Code Department to better understand what additional code regulations may be triggered by the planned rehabilitation work. The building code meeting must be held prior to submitting the NOFA application and a detailed copy of meeting notes is required for verification. The meeting notes must include engineer's name and contact information.

### **RELOCATION**

**Permanent relocation of residential and commercial tenants is an ineligible use of funds offered through this NOFA.** Local, state and/or federal relocation law apply to projects that will temporarily displace current business or residential occupants. Relocation assistance and benefits may be required, which can add substantially to the project cost. A detailed relocation plan and budget is required for all projects that involve temporary relocation of tenants.

### **TENANT NOTIFICATION AND INVOLVEMENT**

Applicants are required to work closely with tenants and give them sufficient notice(s) about the rehabilitation plans for the project. The notification(s) should include scope, timing, whether or not temporary relocation is likely to be required and if it is required, the length of time of the relocation. It is also important that the notice to tenants reassures them that if temporary relocation is required, tenants will be moved to vacant units in the building to the greatest extent possible. However, if off-site temporary relocation is required, the notice must inform tenants that they will be assisted financially. All relocations must comply with local/state/federal laws.

### **PHYSICAL NEEDS ASSESSMENT**

All applications must include a Physical Needs Assessment (PNA), prepared by a third party qualified architect, contractor or construction manager, completed within the last 12 months. The PNA should describe the emergency repairs or the capital improvements that are either required or recommended for immediate attention and the rationale for doing so. City staff recommends that all hard costs be confirmed by contractor's and/or architect's estimate.

Any applications that request financing to replace or significantly upgrade all building systems must include a 20-year Replacement Reserve Analysis, including anticipated replacement reserve deposits and expenditures over the same period.

## **CENTRAL CITY EAST, BROADWAY/MACARTHUR/SAN PABLO AND WEST OAKLAND REDEVELOPMENT AREAS**

If the project is located in the Central City East, Broadway/MacArthur/San Pablo and West Oakland Redevelopment Areas, the Project Area Committee (PAC) for the area must be given at least one presentation. This will allow the PAC to provide informed advice to City Council regarding NOFA proposals in its area. The City Council, acting as the Redevelopment Agency, must seek the advice of the PACs before making funding decisions. Applicants should contact Leslie Mullins, Housing Development Coordinator, at (510) 238-6173 by September 14<sup>th</sup> to discuss scheduling a presentation at the earliest possible PAC meeting. Developers must present their projects to the PAC by December 31, 2009.

### **CONTRACT COMPLIANCE – EMPLOYMENT PROGRAMS AND REQUIREMENTS**

Applicants must comply with the following City of Oakland Employment and Contracting programs:

- 20% Local and Small Local For Profit and Not For Profit Business Enterprise Program (4/2004)
- 50% Local Employment Program (4/2004)
- 15% Oakland Apprenticeship Program (5/2000)
- Payment of Prevailing Wages
- City of Oakland Living Wage Ordinance
- City of Oakland Equal Benefits Ordinance
- Electronic Certified Payroll Submittals

More information can be obtained from the City of Oakland's website at <http://cces.oaklandnet.com/cceshome/> and during the October 1, 2009 meeting with CEDA and Contract Compliance staff at 10 am in City Hall, 2<sup>nd</sup> Floor, Hearing Room 4. Submission of documentation regarding the above requirements and a meeting with the Contract Compliance Department will be required prior to loan closing and construction start.

Additional contracting requirements include:

- The use of contractors that appear on the federal government's list of suspended and debarred contractors is expressly prohibited.
- The Developer must require Prime Contractors and all subcontractors to enter ALL certified payroll reports into the Labor Compliance Program (LCP) tracker. The LCP tracker is a web based program that monitors the payment of Davis Bacon and State of California prevailing wages. The prime contractor will be charged \$80 per month for using the LCP tracker; subcontractors will not be charged for this service.
- The 20% L/SLBE requirement must be met on both the professional services and construction phases of each project.
- The general contractor selected must comply with the State of California Prevailing Wage as determined by the Department of Industrial Relations and HUD Davis Bacon requirements if HOME funds are used.

- Please note that, pursuant to the California Code of Regulations Section 16001(d), residential projects consist of single-family homes and apartments up to and including four stories.
- Applicants seeking residential wage rates must submit a request to Contract Compliance at least 90 days prior to the bid advertisement. The request for residential rates must include a description of the project, type of project (i.e. new construction or rehabilitation), the number of units, and the anticipated bid advertisement date.
- The residential prevailing wage determination includes those crafts(s)/classifications(s), or type of worker(s) not covered by the general determination. Special determinations are issued on a project-by-project basis and cannot be issued retroactively to the bid advertisement date of the project. In the absence of a residential prevailing wage determination, the awarding body should refer to the State of California Director's General Prevailing Wage Determinations.
- Residential prevailing wage determinations are issued based upon information provided which indicates that the contract has not been signed for the project. If the construction contract is not signed and work does not begin within twelve (12) months of the residential wage determination, you must inform the division of Contract Compliance so that updated rates can be obtained.
- In the absence of a special residential wage determination, the general prevailing wage determination must be used. These rates can be obtained via the internet at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR).

## **INSURANCE**

During development, developers must obtain comprehensive general liability and property (hazard) insurance coverage of at least \$2 million. The City/Agency also requires property damage or builder's risk insurance in an amount equal to 100% of the replacement cost of the structure, with a lender's loss payable endorsement in favor of the City/Agency. Construction contractors will be required to obtain liability and builders risk insurance in an amount equal to \$2 million. Automobile insurance, professional liability, workers compensation, and employer's liability coverage are also required. After completion, similar levels of liability and hazard coverage are specified by the regulatory agreement. All policies must name the City/Agency as an additional insured; property insurance must have a lenders loss payable endorsement.

## **NEPA**

If the proposed project is financed with federal funds, the project must also be assessed in accordance with the National Environmental Policy Act of 1960 (NEPA) prior to loan closing.

- Choice Limiting Actions Prohibited during NEPA Review  
Since federal funds may be awarded, applicants must refrain from undertaking activities that would have an adverse environmental impact or would otherwise limit the choice of reasonable alternatives between the time of application submittal and when the City has completed its environmental review process. Such activities include acquiring, rehabilitating, converting, leasing, repairing or constructing property, any kind of site preparation, or committing or expending

HUD or non-Federal funds for HOME program activities with respect to any project eligible under this NOFA. If the applicant has entered into a purchase agreement or contract for any of the above activities prior to applying for NOFA funds, work may continue pursuant to that contract. But amendments to the contract or new contracts may not be entered into. HOME funds may not be used to reimburse an applicant for project related costs incurred after the applicant has submitted the application for funding and before the completion of the City's environmental review process except for activities that are excluded and not subject to federal environmental review requirements, and for certain relocation costs.

- Applicants must sign a certification that they understand this restriction (see *Application*). The prohibition against choice-limiting actions begins on the date that the application is submitted to the City. Applicants are encouraged to check with CEDA Housing Development Coordinator, Jeff Angell, at 510-238-6158, regarding eligible expenditures after the submission of an application. Failure to comply with this requirement could result in a project being ineligible for City funding.
- CEDA staff will seek to obtain NEPA approval in a timely manner. Completing the NEPA review, including local and federal noticing periods, takes a minimum of 6-8 weeks after receipt of all necessary information.

#### **DISABLED AND SENIOR ACCESSIBILITY**

Developments assisted by the City/Agency must meet the requirements of the Americans with Disabilities Act and the Fair Housing Act, among other local, state, and federal laws. Projects with any federal funds must also meet the more stringent accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR 100.205 and Part 8). Section 504 sets minimum percentages of accessible units, and calls for fully accessible common areas, among its numerous requirements. For projects funded with HOME, 5% of the total number of units must be accessible to people with physical disabilities, and an additional 2% of units must be accessible to people with auditory and visual disabilities, as defined in the Uniform Federal Accessibility Standards (UFAS). Where Section 504, the Fair Housing Act, or ADA apply, the developer and project architect must make a written certification of compliance.

#### **LEAD-BASED PAINT**

The use of lead-based paint on City/Agency funded projects is prohibited. Testing and abatement of lead-based paint in rehabilitation projects may be required. Projects must follow federal and state guidelines, which require lead-safe work practices and notification to prospective residents of potential lead-based paint hazards, among other requirements. In addition, Project sponsors must be aware of a new EPA regulation coming into full effect in April 2010 that requires all renovators of pre-1978 homes and child-occupied facilities to be trained in lead-safe work practices and certified by the EPA. For more information go to [www.epa.gov/lead/pubs/trainingproviders.htm](http://www.epa.gov/lead/pubs/trainingproviders.htm) Training is available through the Alameda County Lead Poisoning Prevention Program and other EPA accredited training providers.

Alameda County Lead Poisoning Prevention Program also has grants available for lead hazard control work at family rental properties (1-bedroom units or larger) built before

1978 that are either vacant or occupied by low-income tenants. More information is available at <http://www.aclppp.org/leadfunding.htm>.

### **RESTRICTION ON CONDOMINIUM CONVERSIONS**

Project owners may not convert restricted rental units to condominium or cooperative ownership or sell condominium or cooperative conversion rights for the property during the term of the 55-year Regulatory Agreement. Oakland will give reasonable consideration to any proposal to convert project units to limited-equity cooperative ownership.

### **COST CERTIFICATION**

Developers must arrange for an independent cost certification on completion of a project. Approval of this certification is a requirement for the City's Certificate of Satisfaction of Development Obligations and the release of a substantial portion of the developer fee. Note that this will likely require additional information from what is required in a TCAC cost certification.

Before the developers begins the cost certification process, the City should review the proposed format and information to be included. Each cost certification must include a cost reconciliation schedule and analysis of all reserve accounts.

At a minimum, the City Cost Certification should include:

- **Cost Reconciliation Schedule**

The analysis must include a final sources and uses budget that contains all of the line items of the original City approved budget. The borrower must list all sources in lien order and include general partner contributions, if applicable. All uses should be either loans or equity contributions that were made during the construction period and expenses that were paid during the construction period. The borrower must show the total proposed initial sources and uses and the actual sources and uses by line item. The analysis must explain any difference for line items that are over or below 10% of the original sources and uses budget. Please note that the City's approved budget must be used for this analysis. For HOME projects, ensure that all of the City's final uses were used for eligible costs.

- **Analysis of All Reserve Accounts**

The borrower must show the total proposed initial reserve amount and the actual initial reserve deposit. The analysis must explain any difference between the proposed reserve amount and the deposited amount.

### **NONDISCRIMINATION**

All applicants must agree not to discriminate on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis.