

Section 7

City of Modesto Homebuyer's Assistance Program



City Of Modesto
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These policies supersede any previously adopted policies and are subject to review and revision by the City of Modesto's Housing Rehabilitation Loan Committee

Homebuyer Assistance Program (HAP) Policies

1. APPLICABLE LAWS AND REGULATIONS

- 1.1. All Housing Assistance Program (HAP) activities shall be conducted in compliance with all applicable federal, state, and local program funding sources, if any.
- 1.2. All terms used within these policies shall be as defined by applicable funding source(s) or other locally approved HAP and acquisition program policies.
- 1.3. All program applications will be processed in accordance to the date of receipt and are subject to available funding.

2. PROPERTY ELIGIBILITY

- 2.1. Eligible property shall be located in a residentially zoned area within Modesto City limits.
 - 2.1.1. Eligible property shall not be located within a 100-year flood zone.
 - 2.1.2. Additional location requirements may be applicable depending on available funding source(s).
- 2.2. Eligible property type may be:
 - 2.2.1. Single-family housing unit; or
 - 2.2.2. Condominium unit; or
 - 2.2.3. Townhouse unit; or
- 2.3. Eligible property shall have the following occupancy characteristics:
 - 2.3.1. Currently occupied by the owner-seller of the property; or
 - 2.3.2. If a rental property, sold only to the existing tenant; or
 - 2.3.3. Vacant for ninety days or longer prior to submission of purchase offer by Borrower.
- 2.4. Eligible property shall meet the following criteria:
 - 2.4.1. The housing unit shall have been constructed after 1978, unless the following standards for lead-based paint hazards have been met:
 - 2.4.1.1. The unit shall have been inspected by a certified lead-based paint inspector and, if any defective paint is discovered, the seller shall provide verification of lead-based paint abatement having been completed by a professional abatement contractor. Certification of inspection and abatement shall be provided by the seller in the form required by City of Modesto. The seller is responsible for the cost of all inspections and abatement.
 - 2.4.2. Property with an in-ground pool may not be eligible if the cost of pool maintenance, operations (utilities), and insurance causes the back-end debt to income ratio to exceed 45 percent. (See Section 5.0)
 - 2.4.3. Property shall meet or exceed HUD's Housing Quality Standards (HQS) prior to close of escrow, except when a HAP loan is approved for both HAP and Rehabilitation.
 - 2.4.3.1. The property shall be inspected by a rehabilitation specialist or other personnel authorized by the Community Development Manager for compliance with all applicable codes, ordinances, and standards. The seller is responsible for the cost of correcting any deficient items noted in the inspection, except when a HAP loan is approved for both HAP and Rehabilitation and the following criteria are met:
 - 2.4.3.1.1. Combined Loan-to-Value (CLTV) (primary financing, HAP and rehabilitation loan) shall not exceed 105% of the purchase price (except where the funding source used requires a lower CLTV);

- 2.4.3.1.2. Work to correct deficient items related to health and safety and/or code violations, must start within 30-days of escrow closing with the reasonable anticipation that work will be completed within sixty days of closing; and
- 2.4.3.1.3. All work to correct deficiencies shall be done by a California licensed contractor and with all applicable permits.

- 2.5. The following inspection reports are required and will be at the buyer's risk and expense, unless negotiated with the seller:
 - 2.5.1. Termite inspection.
 - 2.5.2. Home (whole house) inspection by a licensed property inspector.

3. MAXIMUM PURCHASE PRICE

- 3.1. The maximum purchase price of an assisted property shall not exceed 100% of the current median sales price of a single family home listed for City of Modesto. This information may be obtained from a minimum of three (3) sources including, but not limited to, Zillow, Trulia, Data Quick, Realty Trac, Real Quest, Eppraisal.com, or FHA 203(b) loan limits. In order to verify the purchase price, the following shall be provided to City of Modesto:
 - 3.1.1. A copy of the signed purchase agreement, at the time of opening of escrow.
 - 3.1.2. Prior to close of escrow, an appraisal prepared by a state-licensed residential property appraiser.
- 3.2. The following purchase price criteria shall be met when a HAP loan is approved for both HAP and Rehabilitation:
 - 3.2.1. The maximum purchase price, prior to rehabilitation, shall not exceed the "as is" value as established by a California State-licensed residential property appraiser;
 - 3.2.2. The after rehabilitation value may not exceed 100% of the current median sales price as identified in Section A above.
 - 3.2.3. The Appraiser may use a single appraisal to show both values (sub-Sections i and ii) or the appraiser may use two separate appraisals, with the second one issued after completion of the rehabilitation work.

4. HOUSEHOLD/BORROWER ELIGIBILITY

- 4.1. The borrowing household shall have incomes at or below 80 percent (80%) of the Stanislaus County Area Medium Income (AMI), adjusted for household size, as published annually by the California State Department of Housing and Community Development (HCD) or United States Department of Housing and Urban Development (HUD) (depending on the HAP funding source used) unless a higher AMI is authorized by specific funding sources.
- 4.2. Borrowers shall qualify as first time homebuyers (FTHB) and shall occupy the property as a principal place of residence.
 - 4.2.1. A FTHB is defined as a purchaser of a property who neither has, nor has had, present ownership in a principal residence at any time during the three (3) year period prior to the date on which a mortgage pursuant to this Program is executed, except as otherwise allowed by the specific funding source(s) utilized. All Borrowers to be listed on title to the property must meet the definition of a FTHB. Co-signers and co-mortgagors not meeting the definition of a FTHB and who do not intend to occupy the property are prohibited.
- 4.3. Borrowers shall meet the following credit worthiness criteria:
 - 4.3.1. No outstanding judgments or liens at the time of HAP approval or HAP execution. As part of application for assistance, Borrower shall disclose any personal liens that may attach to the property (failure to disclose any pertinent information that may affect

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eligibility and may be grounds for denial of assistance and application withdrawal). To identify any personal liens, a title search of Borrowers shall be conducted after Loan Committee approval.

- 4.3.2. Outstanding collections must be paid prior to HAP approval, unless the Loan Committee determines on a case by case basis that the circumstances that led to collection were outside of the applicant's control and the payment of the outstanding collection(s) will not impact the applicant's ability to financially undertake homeownership.
- 4.3.3. Late payments due to extenuating circumstances will be considered as part of the credit worthiness approval process. Factors leading to late payments will be reviewed and considered on a case by case basis.
- 4.3.4. Shall not have filed bankruptcy, or received a bankruptcy discharge, in the last 3 years prior to date of application.
- 4.3.5. Shall not have been foreclosed upon in the last 3 years prior to date of application.
- 4.3.6. Shall not have defaulted (including bankruptcy or foreclosure) on any HAP, acquisition, or rehabilitation program funding provided at any time by City of Modesto.
- 4.3.7. The Loan Committee may consider other factors impacting Borrower's creditworthiness.
- 4.4. The borrowing household shall, at a minimum, contribute the following amount toward the closing cost of the home purchase based on household AMI:
 - 4.4.1. 50% or less, no contribution required.
 - 4.4.2. 51% to 80%, the lesser of \$1,350 or 1% of purchase price.
 - 4.4.3. 81% to 120%¹, the lesser of \$5,000 or 3% of purchase price.
- 4.5. Borrowers shall have completed a First Time Home Buyer education course from a HUD certified housing counseling agency and provide a copy of the certificate to City of Modesto prior to release of funds.
- 4.6. Borrowers must have the income and credit worthiness to qualify for primary financing, from a primary lender of their choice.
 - 4.6.1. Primary financing shall be in the form of a 30-year fixed rate loan (no co-signers accepted).
 - 4.6.2. There shall be no balloon payment requirements or prepayment penalties included in the terms of the first mortgage.
 - 4.6.3. The monthly mortgage payment must include impound account costs for the payment of property taxes and property insurance as required by the program.
- 4.7. There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.
 - 4.7.1. Net Family Assets include the following:

¹ Assistance to households with AMI levels between 81% and 120% may only be available if funding source allowing said limits is available.

- 4.7.1.1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.
- 4.7.1.2. Revocable trusts. Include the cash value of any revocable trust available to the family.
- 4.7.1.3. Equity in rental property or other capital investments. Include the current fair market value less;
 - 4.7.1.3.1. Any unpaid balance on any loans secured by the property; AND
 - 4.7.1.3.2. Reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.). NOTE: If the person's main business is real estate, then count any income as business income. Do not count it both as an asset and business income.
- 4.7.1.4. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.
- 4.7.1.5. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. (Do not count withdrawals as income.)
- 4.7.1.6. Retirement and pension funds.
 - 4.7.1.6.1. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.
 - 4.7.1.6.2. At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.
 - 4.7.1.6.2.1. If benefits will be received in a lump sum, include the lump sum receipt in net family assets.
 - 4.7.1.6.2.2. If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.
 - 4.7.1.6.2.3. If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.
NOTE: This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic

payments, then the amount would be considered as income and not an asset.

- 4.7.1.6.2.4. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.
- 4.7.1.6.2.5. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.
- 4.7.1.6.2.6. Lump-sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

4.7.1.6.3. A mortgage or deed of trust held by an applicant.

- 4.7.1.6.3.1. Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.
- 4.7.1.6.3.2. This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)
- 4.7.1.6.3.3. To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.
- 4.7.1.6.3.4. To count the imputed income for this asset, determine the asset value ****as of the effective date of the certification****. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification.
- 4.7.1.6.3.5. Net family assets DO NOT include the following:
IMPORTANT: The owner does not compute income from any assets in this paragraph.
 - 4.7.1.6.3.5.1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).
 - 4.7.1.6.3.5.2. Interests in Indian trust land.
 - 4.7.1.6.3.5.3. Term life insurance policies (i.e., where there is no cash value).
 - 4.7.1.6.3.5.4. Equity in the cooperative unit in which the family lives.
 - 4.7.1.6.3.5.5. Assets that are part of an active business. "Business" does NOT include rental of properties that are held as investments unless such properties are the applicant's or tenant's main occupation. NOTE: No revocable trusts (i.e., irrevocable trusts) are not covered by this paragraph.

4.7.2. Borrowers shall not be a person or the immediate relative of any person who is in a decision-making position relative to the HAP Program.

5. QUALIFYING DEBT TO INCOME RATIOS:

- 5.1. Front end (housing) debt-to-income ratio shall not exceed 35 percent (35%) and is the percentage of a borrower's gross monthly income (before deductions) that would cover the cost of the loan principal and interest payment, property taxes, property insurance, mortgage

insurance, and HOA dues, if any.

5.2. Back-end (total) debt-to-income ratio shall not exceed 45 percent (45%) and is the percentage of the borrower's gross monthly income that would cover the cost of housing as described in Section 5.0(A) above, plus any other monthly debt payments such as car loans, personal loans, credit card debt or child support and alimony payments.

6. MAXIMUM AMOUNT OF PROGRAM ASSISTANCE:

6.1. HAP assistance shall be provided in the form of "gap" financing to assist the homebuyer purchase a home while keeping their housing costs affordable as defined in Section 5.0. Gap financing shall not exceed 60,000*. Up to 5 percent of the assistance provided may be used to pay non-recurring closing costs.

6.2. Borrowers must receive the maximum first mortgage loan for which they qualify.

6.3. EXAMPLE Gap Financing Loan Calculation

Contract Sales Price		\$ 250,000
First Mortgage Pre-Approval (meets City terms)		\$(200,000)
Buyer's Minimum Contribution (81% to 120% AMI)		<u>\$ (5,000)</u>
Gap Financing	\$ 45,000	
MAXIMUM Down Payment Assistance (DPA) Available		\$ 60,000
Gap Financing		\$ (45,000)
Estimated Closing Costs ² (5% of \$250,000)		<u>\$ (12,500)</u>
Balance Available - DPA	\$ 2,500	
Total DPA to Eligible Homebuyer		\$ 57,500

7. MAXIMUM COMBINED LOAN TO VALUE RATIO (CLTV):

7.1. The Combined Loan-to-Value (CLTV) ratio for a HAP Program loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100 percent of the purchase price, plus a maximum of up to 5 percent of the purchase price, if allowed by funding source, to cover actual, non-recurring closing costs (except where the funding source used requires a lower CLTV).

8. HAP LOAN TERMS:

8.1. The City of Modesto HAP loan term shall be 30 years.

8.2. The following Lending Criteria shall apply based on the household's Area Median Income (AMI) level:

8.2.1. Very Low to Low-Income (0-80% AMI): The loan shall accrue interest at a rate of 3% simple interest for the first 20 years. The loan shall accrue zero percent (0%) interest for the remaining 10 year term. Payment shall be deferred for 30 years. Voluntary payments are encouraged.

8.2.2. Median/Moderate Income (81% - 120% AMI – If funding source is available): The loan shall accrue interest at a rate of 3% for the first 20 years. The loan shall accrue zero percent (0%) interest for the remaining 10 year term. Simple interest payments shall begin at year 5 until year 20.

² Closing costs in excess of 5% are the responsibility of the homeowner

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- 8.3. All borrowers will be required to have impound accounts for the payment of taxes and insurance to ensure they remain current during the life of the Program loan.
- 8.4. The Program loan shall be secured by the property as a 2nd deed of trust.
- 8.5. The Program loan, principal and interest, shall be due and payable upon:
 - 8.5.1. Sale, transfer, rental or lease of the property.
 - 8.5.2. Borrower's failure to occupy the Property as Borrower's principal place of residence (Borrower must certify occupancy annually).
 - 8.5.3. The Program loan maturity date, however, if it is determined by the loan committee that repayment of the loan at maturity will cause a hardship to the Borrower, the Loan Committee may, at its option, elect to:
 - 8.5.3.1. Approve a one-time additional deferral period of up to 15 years in length at 0% additional interest; or
 - 8.5.3.2. Convert the debt (principal and accrued interest) to a 15 year amortized loan at 0% additional interest. The cost of loan servicing, if any, shall be added to the repayment cost of the amortized loan.
 - 8.5.3.3. Upon default under the HAP Program loan promissory note, deed of trust, the deed of trust rider or the covenants, or other recorded documents of record pertaining to the property.
 - 8.5.3.4. Refinancing of any superior mortgages and drawing cash from equity.
- 8.6. City of Modesto may accept voluntary payments on the loan. Loan payments will be credited to the interest first, then to principal. The borrower may repay the loan balance at any time with no pre-payment penalty.
- 8.7. Program loans are not assumable except under the following limited circumstances:
 - 8.7.1. The transfer of the Property to the surviving joint tenant under a will, descent or operation of the law, on the death of a joint tenant;
 - 8.7.2. A transfer of the Property where the spouse becomes an owner of the property;
 - 8.7.3. A transfer of the Property resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the property.
 - 8.7.4. A transfer to an inter vivos trust in which the Borrower is and remains the beneficiary and occupant of the property.
- 8.8. Restrictions on Sale and Recapture of City of Modesto Funds:
 - 8.8.1. In any transaction in which the City loan is the only secondary financing, the Borrower cannot be restricted from selling the home at its fair market value at any time.
 - 8.8.2. Subsequent buyers, unless assisted with a City loan under this Program, do not need to meet the Eligible Household requirements set forth above, unless required by an affordability covenant resulting from original HAP loan on the same property (i.e. RDA loans).
- 8.9. City of Modesto shall recapture the entire HAP subsidy provided to the Borrower before the Borrower receives a return. The City's recapture amount is limited to the net proceeds available from the sale.
 - 8.9.1. In cases where the net proceeds available at the time of sale are insufficient to recapture the entire direct HAP subsidy provided by the Borrower, City of Modesto will collect any and all net proceeds available resulting from the sale.

8.9.2. In applying the recapture provisions, the following formula shall be used to determine the net proceeds subject to recapture:

Sales Price of the Unit

- **Superior Non-HAP Debt** (principal balance on 1st Mortgage)
- **Closing Costs** (all costs of sale including commission, escrow, title, recording fees, etc.)

=Net Proceeds subject to recapture

8.10. Subordination Policy (see Attachment 1)

8.11. When high housing market conditions require, the Loan Committee may approve subordinate financing to cover mortgage subsidy costs that exceed the HAP loan maximum, provided maximum combined loan to value limits are met, all subordinate liens must have payments deferred, and the term must be for at least as long as the term of the HAP loan.

9. ENVIRONMENTAL REVIEW

9.1. All assisted properties shall be subject to Federal environmental review as required by the funding source(s). No funds shall be released until all environmental reviews have been conducted to the satisfaction of City of Modesto.

10. AFFORDABILITY PERIOD

10.1. All assisted properties shall be subject to affordability periods as required by the funding source(s). If multiple funding source(s) are utilized, the affordability period shall be the longest of the all affordability periods. Affordability periods shall be reflected in a covenant to be recorded on the assisted property and may continue to run with the property even after sale or transfer by the Borrower.

11. HOUSING REHABILITATION LOAN COMMITTEE APPROVAL

11.1. All Down Payment Assistance activities shall be subject to majority vote approval by the City of Modesto Housing Rehabilitation Loan Committee. The Committee shall be comprised of the following voting members:

- 11.1.1. Councilmember (appointment by the Mayor) 4 years
- 11.1.2. Financial Institution – Representative 4 years
- 11.1.3. Service Provider – Representative 4 years
- 11.1.4. General Contractor (active or retired) 4 years
- 11.1.5. Housing Authority of Stanislaus County – Representative 4 years
- 11.1.6. Citizen-at-Large 4 years
- 11.1.7. Citizen-at-Large 4 years
- 11.1.8. Citizen’s Housing & Community Development Committee (alternate) 4 years

11.2. The Community Development Manager may appoint a substitute voting member using alternative criteria if existing circumstances do not allow for a Committee make-up as specified above and time constraints warrant a substitution.

11.3. All actions of the Housing Rehabilitation Loan Committee shall be reflected in meeting minutes to be prepared by staff of the City of Modesto Community Development Division.

12. APPROVAL CONTINGENCIES

12.1. All HAP activities approved by the loan committee shall be contingent on meeting the following requirements:

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- 12.1.1. The borrower shall provide an American Land Title Association (ALTA) title insurance policy in the amount of the City loan to be paid via closing costs or at borrower's expense.
- 12.1.2. All HAP loans shall be evidenced by the following documents and provisions:
 - 12.1.2.1. Loan Agreement;
 - 12.1.2.2. Promissory Notes (s) payable to City of Modesto in the principal amount of the loan and stating the terms and rate of interest;
 - 12.1.2.3. Deed of Trust(s) securing the Note (deed shall be recorded and shall secure City's financial interest in the property);
 - 12.1.2.4. Declaration of Conditions, Covenants, and Restrictions (if applicable);
 - 12.1.2.5. Other appropriate security instrument naming City as beneficiary;
 - 12.1.2.6. Request for copy of "Request for Notice of Default" on first mortgage; and
 - 12.1.2.7. Any other documents determined necessary by the Community Development Manager.
- 12.1.3. The borrower shall provide and maintain fire insurance on the property for the duration of the program loan(s). This insurance must be adequate to cover all encumbrances on the property.
 - 12.1.3.1. The insurer must identify City of Modesto as Loss Payee for the amount of the program loans.
 - 12.1.3.2. A copy of the homeowner's insurance policy shall be provided to City of Modesto at time of close of escrow.
 - 12.1.3.3. Borrower must cause for a copy of homeowner's insurance policy to be provided to City of Modesto on an annual basis.
- 12.1.4. City of Modesto will annually monitor and certify in the loan file that the Borrower and housing unit are adhering to program requirements including but not limited to:
 - 12.1.4.1. Owner-occupancy;
 - 12.1.4.2. Good standing with property tax payment;
 - 12.1.4.3. Hazard insurance;
 - 12.1.4.4. Good standing on primary loan