Department of Housing and Community Development

Affordable Housing Innovation Fund (SB 586 Dutton)
Affordable Housing Revolving Development and Acquisition Program

The "Practitioner Fund" Proposal

Introduction – Invitation

The Department of Housing and Community Development (Department) is in the process of developing a loan fund to be used by nonprofit affordable housing developers for the acquisition of real property for the development or preservation of housing affordable to low- and moderate-income households. The Department will choose up to five Practitioners to receive these funds.

This is not a Request for Proposal. The Department will be issuing a Request for Proposal to select the Practitioners at a later date.

This document represents a draft proposal of the form that the Practitioner Fund (Fund) will take. In order to make the Practitioner Fund a success, the Department believes it should be developed through a collaborative process including potential customers in the discussion. You are invited to review this proposal and to participate in helping to determine the Fund's final form. This document includes questions to be answered and topics to be discussed. Your company has been invited to participate because you have been identified as a stakeholder in this effort.

Join us at a meeting in Rancho Cucamonga at:

Goldy S. Lewis Community Center
11200 Base Line Road
Rancho Cucamonga, CA 91701
919-477-2782
The Creative Corner Room
Wednesday, May 13, 2009
12:00 p.m. – 3:30 p.m.

If you can attend or if you have any questions, please contact;
Peter Solomon, Program Manager
916-324-1484 or:
psolomon@hcd.ca.gov

The Scope and Purpose

"The Practitioner Fund"

One of the major impediments to the development and preservation of affordable housing in California is the lack of ready access to capital by nonprofit developers for the acquisition of property. The need is for loan funds available at a high enough loan limit to purchase sites as they are available with an attractive rate, term and LTV to make projects workable and a speedy process from application to close to be able to react to the market.

To help address this fundamental funding need in the affordable housing development chain, the California legislature passed SB 586 (Dutton, Chapter 652, Statutes of 2007, excerpt attached), the Affordable Housing Innovation Fund, which included the Affordable Housing Revolving Development and Acquisition Program (AHRDAP). The AHRDAP includes two funds, the Loan Fund and the Practitioner Fund.

This proposal is part of the development of the Practitioner Fund. The Practitioner Fund will provide access to important acquisition capital to a special group of nonprofit developers designated "Practitioners." As defined by statute, these Practitioners are an elite group of California's nonprofit affordable housing developers that have significant development experience, organizational capacity, financial stability, and collaborative experience.

The "Practitioner Fund"

The Health and Safety Code §50707(a) states:

"The department shall issue a request for qualification to select one or more nonprofit entities that qualify under Section 501(c)(3) of the Internal Revenue Code to borrow moneys from the Practitioner Fund to purchase real property for the development or preservation of housing affordable to low- and moderate-income households. The selection of one or more nonprofit entities that qualify shall be made by the department, based on the review and recommendation of the department's Loan and Grant Committee. The loan from the Practitioner Fund will be for a maximum of five years."

Summary of Draft Proposal

- Funds Available: Twenty-three million seven-hundred fifty thousand dollars ($23,750,000).

- Use: To purchase real property for the development or preservation of housing affordable to low- or moderate-income households.

- Eligible applicants: Nonprofit entities that meet the threshold requirements set by statute.

- Awards: The Department will select up to five Practitioners to receive loans from the Fund. Selection will be from eligible applicants and based on additional criteria and guidelines.
  - Applicants will be rated and ranked by staff
  - Recommendations will be made by the Loan and Grant Committee

- Loans: Each selected Practitioner will have access to a four million seven-hundred fifty thousand dollars ($4,750,000) line of credit to be used as detailed below.
  - Term of the loan shall be five years.
  - Interest rate shall be 3% simple interest on disbursed funds.

Details

The Department selects five Practitioners

The Department will issue an RFP and accept applications from qualified Practitioners to participate in the Practitioner Fund. The Department, through the RFP process, will select up to five Practitioners.

The decision to select a group of five Practitioners is based on the Department's desire to ensure that the fund supports a mix of project types, populations served, project geographic distribution and urban and rural locations.

The scoring system will require the applicants to pass an initial threshold based on the requirements stated in the statute (H & S §50707(b)(1-5), see below). All applicants that pass the threshold will be scored on additional criteria. The five highest scoring applicants will be selected. Each of the five will receive a commitment of Practitioner Funds of four million seven-hundred fifty thousand dollars ($4,750,000). Each will be required to provide evidence of a commitment of qualified leverage funds equal to or greater than fourteen million two-hundred fifty thousand dollars ($14,250,000) (3:1).

The threshold requirements specified in statute are:

- All Practitioner applicants must meet the following requirements:
  - Nonprofit organization (501(c)(3))
  - Housing development experience in California
  - Minimum of 25 employees

- Availability of additional funds of at least three times the amount requested from the loan fund. **(How is this best demonstrated at the application stage?   Through letters of interest?)**
- Completion of not less than 2,500 total housing units;
  - In order to count the units in a development towards the 2,500 requirement, a majority of units in that housing development must be affordable to low- and moderate-income households (which we would propose to define as also restricted to occupancy by these households),
  - The applicant must be the developer of record on these projects with day-to-day management and financial responsibility for project.
- Sufficient organizational stability and capacity to achieve "scale economies in the development and preservation of affordable housing. Capacity may be demonstrated by substantial successful experience in affordable housing development and management, including successful partnerships with local government entities" **(this requires clarification and definition, item for discussion)**
- Assets worth at least two-hundred million dollars ($200,000,000)

<u>Desired Outcomes</u>

The statutory description of the projects to be built using the Practitioner Fund is "housing affordable to low- or moderate-income households." This can include rental housing projects and homeownership projects. It can include projects in rural or urban areas and in Northern and Southern California.

The Department wishes to ensure that certain minimum goals regarding project types and project location are met by the projects assisted with the funds available through the Practitioner Fund. We believe that selecting five different Practitioners will help to naturally meet these goals. However, we would like the stakeholders participating in this fund development process to assist us in developing a Practitioner selection process that will make reaching these goals attainable in the most straightforward and uncomplicated manner. In order to simplify, we are limiting the number and extent of our goals.

The goals for the whole of the Practitioner Fund are:

- Ensuring at least some minimum level of benefit for very low income households. One way to do this would be to require that, for the units developed by each Practitioner, at least a certain amount (say 20%) be restricted to occupancy by, and affordable to, households earning 50% or less of AMI (area median income).

- Avoiding use of this resource on projects with limited public benefit, such as those that meet only the minimum affordability required for 4% tax credits. For example, requiring all rental developments to have at least 50% of total units restricted to occupancy by households with incomes at or below 50% of AMI, adjusted by household size, with rents not exceeding 30% of 50% of AMI.

- Ensuring some homeownership assistance to low-income households: Our thought here was to set an overall goal of 70% of the homeownership units developed be affordable to low-income households, with up to 30% for moderate-income households.

- Geographic distribution targets – 45% of funds to projects in Southern California and 30% of funds to projects in Northern California

- Rural targets – 10% of funds to rural projects

How do we ensure that these goals are met? Shall we require applicants to provide information about proposed projects? Shall we develop priorities and assign points to those proposed projects based on these priorities? Should we rate and rank the applicants based partly on these priorities?

Or, shall we make the income and project type goals (rental minimums and homeownership income targets) a requirement for the use of funds by each selected Practitioner?

How do we achieve our geographic distribution targets and rural goals?

In what other ways do we differentiate between applicants that pass the threshold requirements? We need to develop quantifiable criteria that each applicant must be measured against. Consider the following:

The statute requires use of a point system for rating and ranking applications. Possibe rating criteria (beyond threshold) are:

- Leverage Proposed:

  - 3:1 is minimum required (fourteen million two-hundred fifty thousand dollars ($14,250,000)). Applicants providing additional leverage will receive bonus points based on percentage of leverage provided above 3:1. **(How is proposed leverage authenticated? What forms of authentication are acceptable?)**

- Greatest level of efficiency and economies of scale. **(Definitions needed)**

- History of partnerships with local government. **(What parameters should be used: number of projects, number of units developed, other?)**

- Evidence of immediate need for funds
    - Options, purchase agreements, etc.

Could we use:

- Evidence of construction financing (LOC or designated capital)

  What other criteria make sense?

After Practitioner Selection

Line of Credit and Property Acquisition

The Department will enter into a Standard Agreement with each Practitioner for a conditional commitment of four million seven-hundred fifty thousand dollars ($4,750,000). The Department shall also enter into a loan agreement and promissory note, with recourse, with the Practitioner to ensure the repayment of funds. The term of the loan agreement shall be for five years. The Department will disburse the first $2.5 million to the Practitioners upon contract execution. The remaining $2.25 million will be disbursed upon request by the Practitioner when the first half is spent for eligible acquisitions. The interest rate shall be 3%, simple interest, on all funds disbursed to the Practitioner and shall be due to the Department annually. At the end of the five year period, the entire loan principle and any accumulated but unpaid interest shall be repaid to the Department.

The Practitioner shall place the funds disbursed by the Department in an interest bearing account. The interest income will be remitted to the Department as partial payment of interest due on the disbursed funds.

Before the Practitioner can use the funds for a property acquisition, the statute requires that they must produce evidence of a binding commitment of leverage funds equal or greater than three times the State funds to be used. The leverage funds must be "nonstate capital." To be considered nonstate acquisition capital, those funds shall be committed for a term at least equal to the term of the loan made under this section, and shall be available to be used for property acquisition. This can included borrowed funds. Equity from the anticipated sale of either federal or state low-income housing tax credits shall not be considered nonstate acquisition capital.

If the selected entity is unable to meet these capital leveraging requirements within 180 days after selection, the loan shall be repaid, with accumulated interest, to the Department, deposited in the fund, and made available to the next highest rated qualified project sponsor. **(This is a statutory requirement. Could this go to one of the selected Practitioners that can show the need for additional funds, or should it be the next highest ranked applicant (i.e. number six in the rating and ranking of original applicants)? The newly**

selected entity would also have 180 days to meet the capital leveraging requirements.)

Upon the completion of an acquisition by the Practitioner using disbursed funds, the Practitioner shall provide the Department with evidence of the purchase in a form acceptable to the Department, e.g. copies of deed of trust, plat map, title report showing Practitioner as owner of record. Additional information provided about the acquisition and the project proposed for the acquired site will include evidence of the required leverage used, of permissive zoning for the proposed use (or reasonable assurance that the required zoning can be acquired) and environmental clearances as they become available.

For each property acquisition funded by the Practitioner Fund, the Practitioner shall enter into a regulatory agreement with the Department to ensure that the purchased property is developed as an affordable housing development. If the acquired property is not used for an affordable housing development, the Practitioner must remit to the Department any profit realized by the Practitioner in the sale of the property.

Early Repayment:

- Funds disbursed to the Practitioner, but not used within 36 months must be returned to the Department (and transferred to the Loan Fund).

- Expenditure schedule will be developed for each project purchase transaction. If schedule is not met, Department may require repayment of unused funds.

Proposed Process

The following describes the Department's planned process for the development, implementation and completion of the Practitioner Fund.

- Develop draft guidelines/comment document and process for Practitioner selection and fund administration.
- Identify and contact potential Practitioners.
- Sponsor stakeholder forum with possible customers.
- Fine tune Practitioner Fund proposal.
- Release RFP with application deadline.
- Receive, review, rate and rank applications.
- Make staff recommendations for selection of Practitioners.
- Department approval
- Loan and Grant Committee review and recommendation
- Award notification
- Contract process (Standard Agreement and Loan Agreement)
- Funds disbursed (in two draws) **(see above)**
    - Cannot be spent until leverage is obtained and verified

- Monitoring for statutory and regulatory compliance (leverage, timely spending, etc.)
    - Practitioners report as property is purchased
- Loan repayment
- Project closeout, including reporting from Practitioners
- Report to legislature

Join the Department in developing this important new resource to assist in the development and preservation of affordable housing in California.

Excerpt from Loan Fund Authorizing Statute

SB 586 Senate Bill

– CHAPTERED BILL NUMBER: SB 586
– CHAPTERED BILL TEXT: CHAPTER 652

FILED WITH SECRETARY OF STATE OCTOBER 13, 2007
APPROVED BY GOVERNOR OCTOBER 13, 2007

INTRODUCED BY Senator Dutton
(Principal coauthor: Senator Correa)
(Coauthors: Assembly Members Emmerson, Ma, and Saldana)

FEBRUARY 22, 2007

An act to add Section 53545.9 to, and to add Chapter 8.5 (commencing with Section 50705) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

. . . ;

SECTION 1. (a) The Legislature hereby finds and declares that the Housing and Emergency Shelter Trust Fund Act of 2006 allocates the amount of one hundred million dollars ($100,000,000) to the Affordable Housing Innovation Fund established in the State Treasury under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545 of the Health and Safety Code and states that the expenditure of those funds is subject to the enactment of a subsequent statute approved by a 2/3 vote of each house of the Legislature.

(b) Accordingly, it is the intent of the Legislature in enacting this act to program the funds made available under subparagraph (F) of paragraph (1) of subdivision (a) of Section 53545 of the Health and Safety Code from the Affordable Housing Innovation Fund.

SEC. 2. Chapter 8.5 (commencing with Section 50705) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 8.5. AFFORDABLE HOUSING REVOLVING DEVELOPMENT AND ACQUISITION PROGRAM

50705. (a) The Affordable Housing Revolving Development and Acquisition Program is hereby established for the purpose of funding the acquisition of property to develop or preserve affordable housing. The program will be comprised of a Loan Fund and a Practitioner Fund.

(b) The department shall adopt guidelines and regulations for the operation of the program and may administer the program under those guidelines for 24 months after the date of adoption of the guidelines. The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

50706. [on the Loan Fund} (

50707. (a) The department shall issue a request for qualification to select one or more nonprofit entities that qualify under Section 501(c)(3) of the Internal Revenue Code to borrow moneys from the Practitioner Fund to purchase real property for the development or preservation of housing affordable to low- and moderate-income households. The selection of one or more nonprofit entities that qualify shall be made by the department, based on the review and recommendation of the department's Loan and Grant Committee. The loan from the Practitioner Fund will be for a maximum of five years.

(b) The entity or entities selected pursuant to subdivision (a) shall demonstrate all of the following:

(1) Operation as a nonprofit entity that qualifies under Section 501(c)(3) of the Internal Revenue Code with housing development experience in this state and a minimum of 25 employees.

(2) Availability of additional funds of at least three times the loan amount.

(3) Completion of not less than 2,500 total housing units, with each housing development project having a majority of its units affordable to low- and moderate-income families, as defined in Section 50052.5 or 50053. For purposes of this requirement, the applicant shall be the developer of record with primary day-to-day management and financial responsibility for the development.

(4) Sufficient organizational stability and capacity to use the Practitioner Fund to achieve scale economies in the development and preservation of affordable housing. Capacity may be demonstrated by substantial successful experience in affordable housing development and management, including successful partnerships with local government entities.

(5) Assets worth at least two hundred million dollars ($200,000,000), to demonstrate evidence of sufficient net worth for assurance of repayment of the loan.

(c) The guidelines and regulations, at a minimum, shall do all of the following:

(1) Establish the minimum criteria required of the practitioner and a point system for rating and ranking responses.

(2) Provide that any equity not originally contributed by the borrower shall be returned to the state for the purposes of this program, if property acquired with state funds is sold or transferred for purposes other than affordable housing.

(3) Give priority to those respondents who demonstrate an immediate need of funds from the committee and who can demonstrate the greatest levels of efficiency and economies of scale.

(4) Establish a reasonable practitioner administrative fee.

(d) Funds not used by a practitioner within 36 months after their availability to the practitioner shall be disencumbered and transferred to the Loan Fund.

(e) The guidelines and regulations shall require that before expending any state funds, the borrower shall obtain binding commitments for at least three dollars ($3) of nonstate acquisition capital to leverage every dollar of loan funds. To be considered nonstate acquisition capital, those funds shall be committed for a term at least equal to the term of the loan made under this section, and shall be available to be used for the purposes of this section. Equity from the anticipated sale of either federal or state low-income housing tax credits shall not be considered nonstate acquisition capital. If the selected entity is unable to meet these capital leveraging requirements within 180 days after selection, the loan shall be repaid, with accumulated interest, to the department, deposited in the fund, and made available to the next highest rated qualified project sponsor. If, within 270 days after selection, there is no remaining qualified applicant available in the case of the Practitioner Fund, any unexpended funds shall be made available for the purposes of Section 50706.

(f) The department shall establish a schedule for the timely expenditure of funds by the applicant. The department may require repayment in the event that a selected entity fails to use the funds consistently with the schedule and the other terms of the program.

50708. The department shall collect all of the following from each borrower and include a summary of this information in its last annual report submitted to the Legislature on or before December 31, 2013, pursuant to Section 50408:

(a) A general description of activities undertaken pursuant to this chapter.

(b) For each property acquired, the acquisition price; the amount and terms of the nonstate funds leveraged, and a statement as to whether the state acquisition funds were essential to the leveraging of these other acquisition funds; a description of the expiration date of the project's rent or sales restrictions; the number of assisted units created or preserved; the amount of state funds required for each assisted unit created or preserved; and the level of affordability maintained.

(c) If any borrower sells any property acquired with assistance through these state funds, a description of the name and location of the purchaser, the purchase price, and the total transaction costs.

(d) A comparison of the cost of creating or preserving units under Section 50706 with that of Section 50707.

(e) An overall assessment of the effectiveness of these funds as tools in creating and preserving affordable housing.

. . . .