

Portfolio Restructuring Guidelines
Department of Housing & Community Development

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Article 1. Provisions for Restructuring

Section 100. Purpose and Scope

- (a) These guidelines implement and interpret Sections 50560, 50561 and 50562, Chapter 3.9 of Part 2 of Division 31 of the Health and Safety Code (“Chapter 3.9”).
- (b) Chapter 3.9, also known as AB 1699, was enacted in 2012. It authorizes the Department of Housing and Community Development (the Department), under specified loan programs stated in subsection (f), to extend the term of existing multifamily housing loans, subordinate a Department loan to new debt, and authorize an investment of tax credit equity in developments with Department loans.
- (c) These guidelines are applicable to the Restructurings, as defined below, whose loan documents are recorded after the effective date of these guidelines.
- (d) Upon its effective date, these guidelines replace the provisions of SB 707 (Statutes of 2007), and the guidelines adopted to implement that legislation. Project restructurings closed under SB 707 rules will continue to be bound by those rules. Projects originally financed by the California Housing Finance Agency will also continue to be governed by the provisions of SB 707.
- (e) These guidelines apply exclusively to Restructuring of projects originally funded under the following Department programs:
 - 1) Rental Housing Construction Program Original (RHCP-O) established by Chapter 9 (commencing with Section 50735);
 - 2) the Special User Housing Rehabilitation Program (SUHRP) established by Section 50670;
 - 3) the Deferred Payment Rehabilitation Loan Program (DPRLP) established by Chapter 6.5 (commencing with Section 50660)
 - 4) the rental component of the California Natural Disaster Assistance Program (CALDAP) established by Section 50671;
 - 5) the State Earthquake Rehabilitation Assistance Program (SERA), established by Section 50671;
 - 6) the rental component of the California Housing Rehabilitation Program (CHRP-R) established by Section 50668.5;
 - 7) the component of the Rental Housing Construction Program funded with bond proceeds, (RHCP-B) pursuant to Section 50771.1;
 - 8) the Family Housing Demonstration Program (FHDP) established with Section 50880; and

- 9) the Families Moving to Work Program (FMTW) established by Section 50880.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(a-c), Section 50561(g), Section 50515.2(h), Health and Safety Code.

Section 101. Definitions

In addition to the definitions found in Part 1 of Division 1 of the Health and Safety Code, and Health and Safety Code Section 50675.2, the following definitions and those found in the Uniform Multifamily Regulations (UMRs) (25 CCR 8301) and the Multifamily Housing Program (MHP) Regulations (25 CCR 7301) shall apply.

- (a) “Existing Household/Tenant” means a household/tenant residing in the project on the date that an application for restructuring, on Department forms, is received by the Department.
- (b) “Fiscal Integrity” means that the total Operating Income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to: (1) pay all current Operating Expenses; (2) pay all current debt service (excluding deferred interest); (3) full fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement. The ability to pay any or all of the permitted annual Distributions shall not be considered in determining Fiscal Integrity.
- (c) “Household Income” means the income of the household occupying an Assisted Unit as calculated in accordance with rules and procedures adopted by the California Tax Credit Allocation Committee (TCAC).
- (d) “Net Rent” means Rent after deducting utility allowance.
- (e) “Original Program” means the Department funded program that initially provided financial assistance to the Project as listed in Section 100(f).
- (f) “Remaining Useful Life” means the period during which the physical characteristics of the Project are projected to comply with habitability standards applicable to the low-income housing tax credit program.
- (g) “Rent” means the same as “Gross Rent”, as defined in the Internal Revenue Code (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an Assisted Unit, and a utility allowance established in accordance with TCAC regulations. For units

assisted under the HUD Section 8 or similar rental subsidy programs, Rent includes only the tenant contribution portion of the contract rent.

- (h) “Restructuring” means extension of the Department’s loan term, subordination of the Department’s loan to a new senior loan, and/or tax credit investment under this Article.
- (i) “Special Rent Increase” means a rent increase greater than the amount permitted under the Original Program’s regulations and statute.
- (j) “Sponsor” is the entity relied upon by the Department for experience and capacity and which the Department expects to maintain control over the Project. In a project with multiple layers of ownership, the Sponsor cannot have more than one entity between itself and the Borrower.
- (k) “Unit” means a residential unit that is used as a primary residence by its occupants, including efficiency units and residential hotel units.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(d), 50561(g).

Section 102. Eligible Projects

Eligible Projects must meet all of the following criteria:

- (a) The Project must have a loan made under one or more of the Original Programs.
- (b) The Department must determine that the Remaining Useful Life of the Project, as stated in a third party physical needs assessment, equals or exceeds the extended loan term.
- (c) The Sponsor and Borrower may not be in breach or default of the Original Program loan documents nor under any other Department programs.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(a), Section 50560(d), 50561(a).

Section 103. Requirements for Loan Extensions Only

The following requirements apply solely to Projects that only require an extension of the Department’s loan.

- (a) The extension must be for at least 10 years, but not more than 55 years;

- (b) The Special Rent Increases set forth in Section 108 are not permitted in cases where the Department loan is only being extended;
- (c) Starting at the time of the Department's approval of the extension, the Project must achieve Fiscal Integrity for at least 15 years, or the length of the extension if the extension is shorter than 15 years.
- (d) The operating reserve requirements of Section 8308(b) do not apply. The Project shall be required to maintain the operating reserve deposit requirements of its Original Program Regulatory Agreement until the balance in the operating reserve equals four months of required debt service, plus eligible operating expenses, plus required deposits to replacement reserve.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(a-b), Section 50561(g).

Section 104. Requirements Pertaining to All Projects Restructured under this Chapter

- (a) After completion of the Restructuring of an Eligible Project under these guidelines, the Original Program statutes and regulations shall no longer apply to the Project.
- (b) The Sponsor of an Eligible Project which requests a Restructuring of the Project shall execute new loan documents reflecting the terms of the restructured loan as required by the Department.
- (c) All new regulatory agreements entered into under these guidelines shall include language specifically importing and preserving those third party beneficiary rights provided for in the Original Program regulatory agreement. The preservation of third party beneficiary rights will only accrue to tenancies that existed before or contemporaneous with the execution of the new regulatory agreement. After the new regulatory agreement is executed, new tenancies resulting from any cause will be regulated solely by the new regulatory agreement.
- (d) Borrower shall obtain the consent and signatures of all lien holders and third parties required to complete loan documents as required by the Department.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(b), 50562(a-b).

Section 105. Requirements for Projects being Refinanced and/or Resyndicated

The following requirements apply to Projects that are being Refinanced and/or Resyndicated as part of the Restructuring:

- (a) Projects must be eligible as set forth in Section 102;
- (b) Restructuring requirements contained in Section 104 must be met;
- (c) After the Restructuring, the Project must achieve Fiscal Integrity for at least 15 years, as evidenced by a multiyear pro forma approved by the Department;
- (d) If the Project's Department loan is extended, the extension must be approved by the Department prior to the maturity date of the Original Program loan, and the extension must be for at least 10 years, but not more than 55 years (or 58 years if tax credit restrictions require this term);
- (e) The new and/or modified loans from other lenders are required to comply with Sections 106 and 107, and with Section 8315 of the Uniform Multifamily Regulations;
- (f) Rent and income restrictions must comply with Section 108;
- (g) Requirements for Relocated Existing Households contained in Section 110 must be met;
- (h) The Project must comply with the Underwriting requirements set forth in Section 112;
- (i) A complete application form and all required documents, including a relocation plan, are needed in order for the Department to begin evaluation of the Project with these requirements, and the application requirements set forth in Section 111 must be complied with.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(a), 50561(a-g).

Section 106. Conditions on Subordination to Senior Loans

If the Restructuring requires the Department to subordinate its loan so that an existing senior loan can be refinanced or so that a new senior loan can be obtained, whether for construction funds or permanent funding, such subordination is permitted only if all of the following requirements are met:

- (a) the subordination will result in reduced debt service, and/or it results in rehabilitation being performed in accordance with subsection (b);
- (b) the amount of senior debt shall not increase over and above the current outstanding balance, except for inclusion of loan fees, unless rehabilitation is being performed. The following additional conditions shall apply:
 - (1) Such rehabilitation shall be limited to improvements, including energy efficiency upgrades, which are documented as needed within the next five years by a third party physical needs assessment and approved by the Department as necessary based on the Department's inspection of the Project;
 - (2) Such rehabilitation shall be modest in size, scope and cost, as set forth in Section 7314 of the Multifamily Housing Program Regulations;
- (c) If the rehabilitation does not result in an increase in the amount of senior debt, the Department may allow reimbursement of costs the Sponsor incurred for capital improvements made in the twelve months prior to submittal of the application for Restructuring, subject to documentation through a construction contract and/or receipts paid to unaffiliated businesses, and reimbursement of operating deficits that are documented by a third party audit and incurred within the previous 12 months, and not reimbursed through reserve withdrawals.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(d-g).

Section 107. Requirements for Senior Loans

- (a) Projects that are securing a new senior loan must demonstrate that they have sufficient operating income to be able to support all required loan payments;
- (b) Senior loans are prohibited from including call option provisions allowing the call of the loan prior to maturity other than in case of default. Nor may Sponsor be required to remarket bonds prior to expiration of the senior loan;
- (c) All payments, lender fees, bond fees, issuer fees, trustee fees, and other fees, charges and costs, in addition to principal and interest payments,

must be fully disclosed to and approved by the Department in the loan closing transaction summary and in the pro forma and operating budget;

- (d) Senior loans must have an interest rate cap on any interest rate that is not fixed for the full term. The interest rate at the cap must not jeopardize Fiscal Integrity, as determined by the Department;
- (e) Interest rate resets, renewals, and extensions of letter(s) of credit related to senior loans must not require the Sponsor to re-qualify pursuant to the senior lender's then-existing underwriting criteria;
- (f) Financial instruments on senior loans (including but not limited to swaps, collars, rate caps, letters of credit, credit enhancement agreements, facility provider agreements, and interest rate hedges) must extend for the full term of the senior loan and cannot be required to be renewed or extended prior to the end of the full term of the senior loan.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(g).

Section 108. Rent Restrictions

- (a) Special Rent Increases may be allowed only if all of the requirements of this section are met:
 - (1) The amount of the Special Rent Increase is the minimum amount necessary to support new debt, including construction financing, to pay for the rehabilitation;
 - (2) The rehabilitation meets the requirements of Section 106(b)(1)-(3);
 - (3) The necessary rehabilitation is at a level that equals or exceeds the minimum per-unit rehabilitation cost standards under the low-income housing tax credit program.
 - (4) The Special Rent Increase shall not occur until the first regularly scheduled Rent increase after the closing of the Restructured loan and in compliance with the notice provisions to Existing Households, as set forth in subsection (b)(1)(A)(v) and (b)(2)(A)(v).
 - (A) Exception. If Borrower (1) submits an application required by Section 111 of these Guidelines and (2) obtains a specific, Department approved plan to undertake a rehabilitation that meets the requirements of Section 106 of

these Guidelines, the Department may approve the implementation of the Special Rent Increase up to three years prior to the expected closing of the Restructured loan subject to the following additional conditions:

- (i) Borrower provides the Department with a commitment letter from a lender funding the proposed rehabilitation outlining the terms of the loan, and demonstrating that the early implementation of Special Rent Increases prior to the expected closing of the Restructured loan is necessary. The submitted documentation includes, but is not limited to, a scope of work, a physical needs assessment prepared by a third party, a construction cost estimate prepared by a general contractor, a development budget, a sources and uses of funds, a preliminary title report, a multi-year pro forma, a proposed operating budget, a complete report showing all existing tenants by unit number, unit size, household incomes as reported in an income recertification performed in accordance with the requirements of the low-income housing tax credit program within the past three months, household size, current rent and subsidies and utility allowance, and date of annual rent increase, and any other documents the Department requires to evaluate the Project and to validate the assertions made by the Sponsor.
- (ii) Borrower provides a proposal listing the Specific Special Rent Increases to be imposed on Existing Tenants and the specific adjustments to be made for vacant assisted and non-assisted units, clearly demonstrating that without early implementation of the Special Rent Increase the Project will not comply with senior lender underwriting requirements. Borrower must apply for and pursue any and all existing or eligible rent subsidies.
- (iii) The additional rental income collected as a result of the Special Rent Increase must be deposited in a segregated account held by a third party, as selected by the Department. Funds from this account may only be used for rehabilitation expenses incurred after the closing of the Restructured loan. If the Restructuring fails to occur within three years of the

execution of the new Regulatory Agreement, the funds in this account may only be used as required by subsection (vi)

- (iv) Borrower will execute a new Regulatory Agreement and secure consents and subordination agreements from lenders and applicable third parties, including third party beneficiaries.
 - (v) Borrower certifies compliance with relocation and other applicable laws.
 - (vi) The Department approves a plan for use of the additional rental income collected for the most critical repairs and replacements and subsidizing tenant Rents increases should the proposed Restructure fail to occur within three years of the execution of the new Regulatory Agreement. In addition, Rents shall be reduced to the original required levels (including allowable increases that would have taken place).
 - (vii) Prior to the implementation of the early Special Rent Increase, Borrower shall provide Existing Tenants with the following notifications of the Special Rent Increases:
 - (a) Notice six months prior to the scheduled Special Rent Increase with an estimate of the amount of the increase;
 - (b) Notice 90 days prior to the actual Special Rent Increase with the exact amount of the new Rent.
- (5) Borrower certifies that any necessary consent(s) from any appropriate third party beneficiaries have been obtained.
- (b) Special Rent Increases are limited as follows:
- (1) For Projects originally funded under RHCP-B and FHDP:
 - (A) For Existing Tenants: Special Rent Increases for tenants living in Assisted Units at the time of Restructuring pursuant to this chapter shall be limited as follows:

- (i) For Existing Tenants with incomes not exceeding 35 percent of area median income, Special Rent Increases shall be limited to a maximum of 5 percent per year, until the Rents reach the levels specified in subsection 108(b)(1)(B) below. Rent increases shall comply with State relocation law provisions on rent increases for Existing Households;
 - (ii) For Existing Tenants with incomes exceeding 35 percent of area median income, Special Rent Increases shall be limited to a maximum of 10 percent per year, until the Rents reach the levels specified in subsection 108(b)(1)(B) below. Rent increases shall comply with State relocation law provisions on rent increases for Existing Households;
 - (iii) The amount of the Special Rent Increase shall not be greater than the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(h);
 - (iv) The projected maximum Rent shall not exceed 50 percent of each Existing Tenant's actual Household Income. This requirement shall be applied using the actual Household Incomes determined at the time of Restructuring;
 - (v) The Borrower shall provide Existing Tenants with the following notifications of the Special Rent Increases:
 - (a) Notice six months prior to the scheduled Special Rent Increase with an estimate of the amount of the increase;
 - (b) Notice 90 days prior to the actual Special Rent Increase with the exact amount of the new Rent.
- (B) For vacant or vacated Units:
- (i) Rents may be restricted at a maximum of 30 percent of 35 percent of area median income for the number of Units designated in the Project's Original Program Regulatory Agreement as very low-income Units;

- (ii) Rents may be increased up to a maximum of 30 percent of 60 percent of area median income for the number of Units designated in the Project's Original Program Regulatory Agreement as lower-income Units;
 - (iii) Regulated Rents set forth in the unit mix shall not exceed the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(h);
- (2) For Projects originally funded under RHCP-O, SUHRP, DPRLP, CHRP-R, CALDAP, SERA, and FMTW:
 - (A) For Existing Tenants: Special Rent Increases for tenants living in assisted units at the time of restructuring pursuant to this chapter shall be limited as follows:
 - (i) For existing tenants with incomes not exceeding 35 percent of area median income, Special Rent Increases shall be limited to a maximum of 5 percent per year, until the Rents reach the levels specified in subsection 108(b)(2)(B) below. Rent increases shall comply with State relocation law provisions on rent increases for Existing Households;
 - (ii) For existing tenants with incomes exceeding 35 percent of area median income, Special Rent Increases shall be limited to a maximum of 10 percent per year, until the Rents reach the levels set under subsection 108(b)(2)(B) below. Rent increases shall comply with State relocation law provisions on rent increases for Existing Households;
 - (iii) The amount of the Special Rent Increase shall not be greater than the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(h);
 - (iv) The projected maximum Rent, as determined by subsection 108(b)(2)(B) shall not exceed 50 percent of each Existing Tenant's actual Household Income. This requirement shall be applied using the maximum Rent levels set forth in the Regulatory Agreement and

the actual Household Incomes determined at the time of Restructuring;

- (v) The Borrower shall provide Existing Tenants with the following notifications of the Special Rent Increases:
 - (a) Notice six months prior to the scheduled Special Rent Increase with an estimate of the amount of the increase;
 - (b) Notice 90 days prior to the actual Special Rent Increase with the exact amount of the new Rent.

(B) For vacant or vacated Units:

- (i) Rents for at least 35 percent of Assisted Units, or as specified in the Original Program Regulatory Agreement, whichever is greater, shall be restricted to the midlevel target used by the Multifamily Housing Program. For purposes of this paragraph, "midlevel target used by the Multifamily Housing Program" shall mean either of the following:
 - (a) For counties with an area median income of 110 percent or less of state median income, it shall mean 30 percent of 30 percent of state median income, expressed as a percentage of area median income;
 - (b) For counties with an area median income that exceeds 110 percent of the state median income, it shall mean 30 percent of 35 percent of state median income, expressed as a percentage of area median income.
- (ii) Rents for the remainder of the Assisted Units may be increased up to a maximum of 30 percent of 60 percent of area median income;
- (iii) Regulated Rents shall not exceed the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(h);

(C) The Rent Restrictions set forth in this subsection may require some Unit Rents to be decreased in order to comply with the Chapter 3.9 requirement for at least 35 percent of the Assisted Units to be restricted to the midlevel target of the MHP Program.

(c) If Special Rent Increases are not required, annual Rent increases shall be equal to the percentage increase in the Rent for a two-bedroom unit, as published in the MHP Rent and Income Limits, restricted at 50 percent of area median income.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(b-e).

Section 109 RHCP-O Annuity

- (a) Annuity payments provided under the RHCP-O program shall be continued only for low- or very low-income Existing Households who were occupying Assisted Units at the time of the Restructuring for the number of months remaining under the Original Program Regulatory Agreement, and only to the extent that funds are available to the Department for such payments.
- (b) In order to preserve the RHCP-O annuity funds for the greatest length of time possible, the Rent shall increase to 30 percent of Household Income upon the next income recertification after the closing of the Restructuring. Sponsor shall provide 90 days' notice of the Rent increase to the Existing Households.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(h).

Section 110. Requirements for Relocated Existing Households

If an Existing Household residing in an Assisted Unit in the Project on the date that the Restructuring request is submitted is being permanently or temporarily relocated due to lengthy rehabilitation work, the following requirements shall be met:

- (a) Prior to the tenant's relocation, the Sponsor shall provide a special notice to the tenant setting forth the tenant protections and Rent increase limitations of Section 108, including the requirement for Existing Households to receive a Right of First Refusal to reoccupy a comparable unit upon completion of the rehabilitation or reconstruction, and the

amount of the Rent that will be charged upon reoccupancy. The notice shall state the importance of the Existing Household maintaining communication with the Sponsor through updating its forwarding address whenever the Existing Household moves;

- (b) Existing Households who are relocated due to rehabilitation shall have first priority in occupying comparable units in the Project subsequent to the rehabilitation and shall also be provided with relocation benefits stipulated by Section 7260 of the Government Code;
- (c) If an Existing Household who is adequately notified of these tenant protections chooses not to move back to the Project or receives permanent Relocation benefits, they no longer are considered an Existing Household for purposes of the Rent restrictions contained herein;
- (d) Existing Households who are temporarily relocated and who return to the Project upon completion of rehabilitation will be charged Rent that complies with the limits of this section and section 108;
- (e) Projects undergoing Restructuring that includes new funding, tax credits or rental assistance from a federal or State program that requires that eligible tenants must be homeless or disabled, or have incomes that comply with low-income housing tax credit rules, which may result in some Existing Households being ineligible to be occupants in the Restructured Project, shall only be required to provide relocation benefits stipulated by Section 7260 of the Government Code. For example, if a Project is awarded Section 811 funds from the US Department of Housing & Urban Development, and some of the Existing Households are not eligible under the 811 rules, those tenants will only receive relocation benefits as required by Section 7260 of the Government Code, but will not receive the otherwise applicable occupancy or Rent restrictions of this Act.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(f).

Section 111. Application Process

- (a) The Sponsor shall submit an application for Restructuring on forms made available by the Department, including all required supporting documentation, including but not limited to: a third party physical needs assessment and replacement reserve study, scope of work, development budget, sources and uses of funds, relocation plan, a preliminary title report, loan documents from proposed junior and senior lenders and all other sources of funds, a complete report showing all existing tenants by unit number, unit size, household incomes as reported in an income recertification performed in accordance with the requirements of the low-

income housing tax credit program within the past three months, household size, current rent and subsidies and utility allowance, and date of annual rent increase, proposed operating budget, 30 year pro forma, and any other documents the Department requires to evaluate the Project and to validate the assertions made by the Sponsor;

- (b) An application shall be deemed complete when the Department is able to review the application and assess whether the project complies with Section 50560, 50561, and 50562 of the Health and Safety Code and these guidelines;
- (c) Depending on the volume of applications and the complexity of the requested Restructurings, the Department will set minimum processing times for approval of the Restructurings and will post these on the Department's website;
- (d) In order for the Department to complete a Restructuring under these guidelines in a timely manner prior to the maturity date of the Original Program loan, the Sponsor must submit a complete application to the Department no later than six months before the maturity date of the Original Program promissory note. If an application is submitted to the Department less than six months before the maturity date, the late submission is not an bar to Restructuring under these guidelines;
- (e) The Department will use available documentation contained in its files or any other source to determine the accuracy and reasonableness of information contained in the application;
- (f) Prior to closing the transaction, the current Sponsor or new Sponsor, as applicable, shall submit additional information, documents, instruments and certifications as deemed necessary by the Department.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560, 50561.

Section 112. Underwriting Requirements

The underwriting requirements for Sponsors of Projects requesting a Restructuring shall be those contained in the Uniform Multifamily Regulations, set forth in 25 CCR Section 8301, 8308, 8309, 8310, 8311, 8312 and to 8314, except for the following:

- (a) New replacement reserve deposit requirements shall be based on a third party physical needs assessment and replacement reserve analysis projecting the replacement costs, adjusted for inflation, over 20 years of operations;

- (b) Commercial vacancy assumptions shall be based on the operating history, including current leases, of the Project;
- (c) Operating expenses shall be based on actual operating history of the project, as evidenced by annual reports and audits, as well as the minimum expense requirements stated in CCR title 4, Division 17, Chapter 1, Section 10327. Operating expenses shall be adjusted to reflect improvements that are being made through the rehabilitation, which should reduce operating expenses;
- (d) There is no maximum debt service coverage ratio for Projects that do not request a Special Rent Increase. For Projects that do request Special Rent Increases, the debt service coverage ratio must comply with the UMRs;
- (e) Where a Project is receiving renewable project-based rental assistance that is terminated by the subsidy provider, Rents for Assisted Units previously covered by this assistance may be increased above the levels stipulated in Section 108, but only to the minimum extent required for Fiscal Integrity, as determined by the Department, and in no event exceeding 30 percent of 50 percent of area median income;
- (f) Developer fee shall not exceed the amount that may be included in basis under the Low-Income Housing Tax Credit Program 9 percent tax credit rules if a Special Rent Increase is requested. If a Special Rent Increase is not requested, the developer fee is not limited by these Guidelines but must comply with limitations imposed by other funding sources;
- (g) Balloon payments are prohibited unless the Project demonstrates, to the Department's satisfaction, that it has sufficient operating income, and income obtained through refinancing or other means, to be able to pay off the balloon payment.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(g).

Section 113. Department Fees

- (a) If a Restructuring involves an extension of the Department's loan, the Department shall charge a monitoring fee to cover its monitoring costs for the period of the extension. This fee may be paid in annual installments or through a single payment made at the time of the Restructuring. The fee may also be waived or deferred by the Department, in accordance with the provisions of subsection (e) below.

- (b) If the monitoring fee is paid in annual installments, the first installment shall be due on the last day of the Project fiscal year immediately following the maturity date of the Original Program loan. The amount of the installment shall be \$10,000, increased by three percent each year beyond 2013, which is the Department's projected cost for monitoring a single project. This includes a 30 percent premium to cover the cost of monitoring projects for which fees are waived or deferred.
- (c) If the monitoring fee is paid through a single payment at the time of Restructuring, the amount shall equal the net present value of the payments that would have been made if the fee was paid in annual installments, as described in subsection (b), using a discount rate of 2.18 percent, which is the average State Money Investment Fund ("SMIF") Apportionment Rate for the period from 2002 through 2012. The Department may adjust this rate every five years to reflect average SMIF rates over the most recent 10 year period.
- (d) Not sooner than fifteen years following a Restructuring, the Department may adjust the amount of the monitoring fee that is paid on an annual basis, to more closely match its costs.
- (e) The Department may defer or waive some or all monitoring fees, to the extent required for the achievement of Project Fiscal Integrity, for the following classes of projects:
 - (1) Group Homes;
 - (2) Projects which have 50 percent or more of the Assisted Units restricted to extremely low-income households; or
 - (3) Projects requesting only loan extensions where Sponsor contributions are required to project positive cash flow for 15 years
- (f) To cover the Department's costs of processing Restructuring transactions, a transaction application fee of \$1,000 must be submitted along with the application for restructuring. In addition, upon the closing of the Restructuring, a transaction fee of \$39,000 must be paid. However, Sponsors that are only requesting a loan extension, and not any other type of Restructuring, shall only be charged \$4,000 upon the closing of the Restructuring. Sponsors applying for Special Rent Increases to begin prior to the Restructuring must pay an additional \$9,000 upon the execution of the new Regulatory Agreement authorizing the initial Special Rent Increase.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(a).

Section 114. Use of Operating Cash Flow

- (a) The new Department loan documents recorded as part of the Restructuring will require operating cash flow to comply with Section 8314 of the Uniform Multifamily Regulations, except as set forth in subsection (b) and (c);
- (b) Residual receipts payments that are required to be paid to the Department shall be structured to avoid a reduction in the amount of residual receipt loan payments made to local public agencies due solely to the change in payment terms on the Department's loan. In the event that the pro forma shows that there will be a reduction in the amount of local public agencies' loan payments from residual receipts solely due to the change in the Department's loan terms, the Department's Regulatory Agreement shall provide for a specified amount of residual receipts to be paid to the local public agency, as long as there is sufficient cash flow for that amount to be paid each year;
- (c) Any income from commercial space shall be included with residential income (including non-assisted unit income) for purposes of calculating uses of operating cash flow.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(g).

Section 115. On-going Management Requirements

The Department shall require submission of information to comply with Section 50561(i) of Chapter 3.9. With the exceptions noted elsewhere in these guidelines, the following MHP and Uniform Multifamily Regulation sections are incorporated by reference into these guidelines and shall apply to each project after Restructuring:

- (a) The following Uniform Multifamily Regulations:
 - (1) Section 8305, Tenant Selection;
 - (2) Section 8306, Tenant Recertification;
 - (3) Section 8307, Rental Agreement and Grievance Procedure;
 - (4) Section 8308, Operating Reserves;

(5) Section 8309, Replacement Reserves;

(b) The following MHP Regulations:

(1) Section 7312(a), (c) and (e), Rent Standards;

(2) Section 7323, Defaults and Loan Cancellations with the exception of subdivisions (c) and (d);

(3) Section 7324, Management and Maintenance;

(4) Section 7325, Reporting;

(5) Section 7326, Operating Budget.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560, 50561, 50562.