

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED GUIDELINES FOR AB 1699

NOTICE IS HEREBY GIVEN that the Department of Housing and Community Development (Department) proposes to adopt guidelines which will govern implementation of AB 1699 (Chapter 3.9 of Part 2 of Division 31 of the Health and Safety Code). Existing statutory provisions and guidelines for the Housing Loan Conversion Program (SB 707, Statutes of 2007) for Department restructurings that have not closed prior to adoption of these guidelines will be superseded by these guidelines upon final adoption. In addition, the statutes, regulations, guidelines, standard agreements, regulatory agreements, and loan documents of the original program under which the HCD financial assistance was provided, will no longer apply to the projects restructured under AB 1699 and will be replaced by documents conforming to AB 1699.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed action to the Department. The written comment period begins **September 6, 2013** and closes at **5:00 p.m. on October 4, 2013**. The Department will consider comments received during this timeframe. Please address your e-mail comments to Russ Schmunk at Russ.Schmunk@hcd.ca.gov and include **AB 1699 Comments** in the subject line. Written comments can also be sent via mail to Russ Schmunk, Assistant Deputy Director, Asset Management and Compliance Branch, Department of Housing and Community Development, P.O. Box 952054, Suite 400, Sacramento, California 94252-2054, **Attention: AB 1699 Comments**. *Please reference the specific section of the proposed guidelines on which you are commenting in your comments.*

PUBLIC HEARINGS

Public hearings are scheduled on the proposed guidelines at the following locations:

Date: September 23, 2013
Time: 1:00 p.m. to 3:00 p.m.
Location: Van Nuys State Office Building Conference Room
6150 Van Nuys Blvd.
Van Nuys, CA 91401

Date: September 27, 2013
Time: 1:00 p.m. to 3:00 p.m.
Location: Department of Housing and Community Development
2020 West El Camino, Conference Room 402
Sacramento, CA 95833

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. ***Please reference the specific section of the proposed guidelines on which you are commenting in your oral or written comments.***

AUTHORITY AND REFERENCE

The Department is conducting this guideline development activity pursuant to the authority provided by Health and Safety Code Sections 50560, 50561 and 50562. These guidelines implement, interpret and make specific the provisions of Sections 50560, 50561, and 50562 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code Section 50560(h) establishes that the Department is responsible for developing guidelines to implement the provisions of AB 1699 which gives the Department the authority to restructure the provisions of specified older program loans to extend them, subordinate them to new debt, and/or allow an infusion of equity from the Low Income Housing Tax Credit Program. The restructuring is intended to preserve affordable housing units that would have been lost to termination of the regulatory provisions restricting rents and occupancy, to address physical deterioration of the property and/or to improve project fiscal integrity.

These guidelines will apply to all restructurings for the following Department-administered multifamily housing 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.

Upon adoption of the final AB 1699 guidelines and completion of the restructuring, the original statutes, regulations, guidelines, standard agreements, regulatory agreements and other loan documents for these programs will no longer apply to the projects. Instead, the projects will be subject to the provisions of the AB 1699 guidelines which, with certain exceptions, are similar to the provisions of the Department's Multifamily Housing Program and the Uniform Multifamily Regulations.

For Department-administered programs, these guidelines, when adopted, will supersede and replace the guidelines for the Housing Loan Conversion Program (SB 707, Statutes of 2007) for any project restructuring that was not completed as of the date of adoption.

AB 1699 Guidelines

Below is a summary of the guidelines that are proposed to be adopted.

Section 100. Purpose and Scope – describes the purpose of the guidelines and lists the affected programs.

Section 101. Definitions – adopts definitions applicable to these guidelines.

Section 102. Eligible Projects – lists the criteria for project participation.

Section 103. Requirements for Loan Extensions Only – describes the requirements for projects only requesting a loan extension which differ from the requirements for other types of restructurings.

Section 104. Requirements Pertaining to All Projects Under this Article – describes the provisions for all restructurings and specifies the project will no longer be under the requirements of the original program from which it was funded.

Section 105. Requirements for Projects being Refinanced and/or Resyndicated – lists requirements for these types of restructurings including fiscal integrity, length of loan extensions, and additional requirements which are further described in other sections of these guidelines.

Section 106. Conditions for Subordination to Senior Loans – describes the limitations on new senior debt and items that may be paid for with it.

Section 107. Requirements for Senior Loans – describes conditions for approving loans and discusses other requirements including interest rate caps, prohibition on call options, interest rate resets, and disclosure of fees.

Section 108. Rent Restrictions – describes regular, allowable rent increases and requirements for rent increases above that amount. This section also specifies how rents are increased for existing households and how they are set for vacant units.

Section 109. RHCP-O Annuity – sets out limitations on the continuance of the RHCP-O annuity payments and requires an increase in the percentage of household income paid for rent for existing assisted households.

Section 110. Requirements for Relocated Existing Households – establishes special provisions that apply to existing households that are relocated due to rehabilitation activities. Describes relocation benefits to be provided to households required to permanently relocate due to other funding agency eligibility restrictions.

Section 111. Application Process – describes the application process and the types of documentation required. Also discusses other application processing matters.

Section 112. Underwriting Requirements – in general, follows the Uniform Multifamily Regulations requirements with the exceptions noted for replacement reserves, commercial vacancy rate, operating expense adjustments, debt service coverage ratio, loss of project subsidies, and developer fees.

Section 113. Department Fees - includes requirements for monitoring fees and transaction processing fees.

Section 114. Use of Operating Cash Flow - in general, follows the Uniform Multifamily Regulations requirements. Clarifies that commercial space income is included with residential space income in determining cash flow. Also, contains provisions for maintaining residual receipt payments for local governments.

Section 115. On-going Management Requirements – incorporates specific sections in the Uniform Multifamily Regulations into these guidelines.

IMPACT OF PROPOSED REGULATIONS

As required by Government Code section 11346.5, subdivision (a)(3)(C), the anticipated benefits of the proposed guidelines include, but are not limited to: (1) preservation of affordable housing units through extension of restrictions on rents and income-limited occupancy, physical improvements to the properties, and/or the fiscal integrity of the projects; (2) updating and standardizing the framework for project regulatory agreements; and (3) protection of existing households in the properties from involuntary displacement.

EVALUATION OF WHETHER THESE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

Pursuant to Government Code section 11346.5 subdivision (a) (3) (D) the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has concluded that the proposed regulations are not inconsistent or incompatible with existing state regulations.

LOCAL MANDATE

The Department has determined that these regulations do not impose a mandate on local agencies or school districts. Eligibility for the program is limited to multifamily property owners with the capacity to develop and administer affordable housing. In any case, participation in the program is voluntary.

FISCAL IMPACT

The Department has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in Federal funding to the State will result from the proposed action.

The Department is not committing any new funds to the projects eligible for restructuring under the provisions of these guidelines. By bringing the rules for various programs into conformance with the Department's Uniform Multifamily Regulations, the Department anticipates that over time, the proposed changes will result in modest reductions in administrative costs.

Participation in AB 1699 restructurings is voluntary. The Department proposes to charge fees to cover the costs of processing the restructurings as well as monitoring fees to cover the additional period during which the Department will have to ensure compliance through long-term oversight. These fees are being established at levels to cover the Department's costs for these activities so there will not be any additional cost to the Department.

The Department loans will accrue interest, some of which will be repaid on an annual basis from project operating cash flow and the remainder will be due at the end of the loan term. In return for these payments, the Department will forego repayment of the loans and any accrued interest for an extended period of time in order to preserve the existing affordable housing stock for the State of California. The original amount of Department assistance per unit in the projects eligible for restructuring is less than the current cost of developing new affordable housing units.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed guidelines will not

have a significant impact on the creation of new businesses, the elimination of existing businesses within California, or the expansion of businesses currently operating in California. The proposed guidelines will have no significant impact on the health and welfare of California residents, worker safety, or the state's environment. In any case, participation in the program is voluntary.

The Economic Impact Assessment prepared pursuant to Government Code Section 11346.3(b) was relied upon by the Department in preparing the proposed guidelines.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed action has no impact on small business because participation in AB 1699 is voluntary.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action has no significant impact on housing costs in California.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the guidelines will not affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California; or the expansion of businesses currently operating in California. It will not have a significant statewide impact on the health and welfare of California residents, worker safety, or the state's environment. In any case, participation is voluntary.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While private businesses (including nonprofits) are eligible to participate under AB 1699, participation is voluntary.

The Department has determined that the multifamily rental project owners who chose to participate in the loan restructurings will incur minor costs for the processing fees and the long-term monitoring fees. These costs are considered minor in relation to the value of the properties and the additional private and, possibly, other public funding that will be obtained by the projects.

CONSIDERATION OF ALTERNATIVES

The Department of Housing and Community Development must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has discussed alternatives it considered, and why it chose the proposed actions it selected, in its guidelines text and Initial Statement of Reasons.

AVAILABILITY OF TEXT OF PROPOSED GUIDELINES AND INITIAL STATEMENT OF REASONS

The text of the proposed guidelines is available upon request, along with the Initial Statement of Reasons, prepared by the Department, which provides the reasons for the proposals, and is available on the Department's web site, at <http://www.hcd.ca.gov/fa/amc/>. All information the Department is considering as a basis for this proposal is maintained in a guidelines file, which is available for inspection at the address noted below. Copies can be obtained by contacting Russ Schmunk at the address noted below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the written comment period, the Department may adopt the proposed guidelines substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text--with changes clearly indicated--available to the public for at least 15 days before the Department adopts the guidelines as revised. Please send requests for copies of any modified guidelines to the attention of Russ Schmunk at the address indicated below. The Department will accept written comments on the modified guidelines for 15 days after the date on which they are made available.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed guidelines are based is contained in the guidelines file, which is available for public review, by contacting Russ Schmunk at the address noted below.

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will

be available from the contact person named below.

CONTACT PERSON

HCD: Russ Schmunk (Russ.Schmunk@hcd.ca.gov)
(916) 263-1015

HCD Address: State of California
Department of Housing and Community Development
Asset Management and Compliance Branch
ATTENTION: AB 1699
P.O. Box 952054, Suite 400
Sacramento, California 94252-2054

HCD Website: Copies of the Notice of Proposed Action and the text of the proposed AB 1699 Guidelines and Initial Statement of Reasons may be accessed through our website at:
<http://www.hcd.ca.gov/fa/amc/>

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed guidelines during the written comment period. ***Please reference the specific section of the proposed guidelines on which you are commenting in your comments.***

Inquiries concerning the substance of the proposed action should be directed to:

**Russ Schmunk, Assistant Deputy Director
Asset Management and Compliance Branch
Department of Housing and Community Development
ATTENTION: AB 1699
P.O. Box 952054, Suite 400
Sacramento, California 94252-2054
E-mail: Russ.Schmunk@hcd.ca.gov**