



## Summaries of and Responses to Public Comments On 2<sup>nd</sup> Draft AB 1699 HCD Loan Restructuring Guidelines

On March 26, 2014, the Department of Housing and Community Development (“HCD” or “Department”) released for public comment a second draft of the proposed guidelines governing the extension and restructuring of loans made under certain HCD loan programs.

Comments were received during the public comment period, which was March 25, 2014 to April 11, 2014. Written comments were received from the following parties:

<b>Commentator Short Name</b>	<b>Commenter</b>
CEI	Kevin Knudsen, Community Economics, 538 9 <sup>th</sup> Street, Suite 200, Oakland CA 94607, telephone 510.832.8300
Goldfarb	Karen Tiedemann, Goldfarb Lipman Attorneys, 1300 Clay Street, Eleventh Floor, Oakland CA 94612, telephone 510.836.6336
MidPen	Jan M. Lindenthal, MidPen Housing, 303 Vintage Park Drive, Suite 250, Foster City, CA 94404, telephone 650-356-2900
Abode	Karl Lauff, Abode Communities, 701 E. 3 <sup>rd</sup> Street, Suite 400, Los Angeles CA 90013, telephone 213.225.2808
BRIDGE	Cynthia Parker, BRIDGE Housing Corporation, 345 Spear Street, Suite 700, San Francisco, CA 94105 telephone 415.989.1111
CADA	Diana Rutley, Capitol Area Development Authority, telephone (916) 322-2114
CHPC	Diep Do, California Housing Partnership Corporation, 369 Pine Street, Suite 300, San Francisco CA 94104, telephone 415.433.6804
Mercy	Doug Shoemaker, Mercy Housing California, 1360 Mission Street, Suite 300, San Francisco CA 94103, telephone 415.355.7100
Western Center	Brian Augusta and Navneet K. Grewal, Western Center for Law & Poverty, 3701 Wilshire Boulevard, Suite 208, Los Angeles CA 90010, telephone 213.487.7211
Patrick Sabelhaus	Patrick Sabelhaus, Law Offices of Patrick R. Sabelhaus, 1006 Fourth Street, Sixth Floor, Sacramento, CA 95814, telephone 916.444.0286

Below are summaries of comments received, and HCD’s response.

Comment	Response
<b>General</b>	
CEI, Mercy, Mid Pen : HCD has pointed out that the statute does not permit Special Rent Increases in projects that are not being rehabilitated, but it is still critical that these projects be permitted to charge rents that will allow them to break even and be preserved. Currently, the only option for these projects is to continue to struggle and sponsor make up deficits or to go through a work out and risk being declared in default. A mechanism to allow increases in rents is needed for these projects.	HCD recognizes that this is an issue, and will look at it outside of the AB 1699 guideline adoption process.
CHPC: Same as CEI, and requests to know the timing and structure for this effort.	Same as above. Due to other priorities, HCD is not in a position to commit to a timetable.
<b>Section 100 Purpose and Scope</b>	
CHPC: We appreciate your clarification that MHP and HOME are not included by statute as eligible for Restructuring under 1699, but that HCD is open to exploring the general subject of how to address the needs of MHP and HOME projects. Please provide information on the timing and structure of discussions relating to the needs of these programs.	HCD is amenable to looking at issues in these portfolios, outside of the AB guideline adoption process. It is not prepared at this point to commit to a schedule for this exercise.
CEI: Support legislation to add MHP to the list of eligible programs.	Same as above response to CHPC.
Mercy: Add MHP.	Same as above response to CHPC.
MidPen: Add MHP.	Same as above response to CHPC.
<b>Section 101 Definitions</b>	
<b>Section 101(d)</b>	
BRIDGE: Add language to make it clear that the definition of household income is also in accordance with MTSP/HERA rules using placed in service dates to determine limits.	Agreed. This change has been made.
<b>Section 101(e)</b>	
	HCD is proposing to add a definition of “Net Developer Fee” in

Comment	Response
	response to comments made on Section 112(f).
<b>Section 101(h)</b>	
Mercy: Expand definition of <b>Restructuring</b> to include limited partner buy-outs.	The statute authorizes restructuring HCD’s regulatory framework only for transactions involving loan extensions, new senior debt, and syndications. It is intended to avoid losing affordability as the result of the need to repay HCD loans, and to permit access to tax credit equity and private loans. There is no authorization for restructuring when the only transaction is the exit of the limited partner, and it is unclear why this would be necessary.
CEI: To clarify that “Restructuring” is not limited to just one type of transaction, add the words “one or more of the following”.	Agreed. This change has been made.
<b>Section 101(i)</b>	
Western Center: Change definition of <b>Special Rent Increase</b> back to the definition in the original draft guidelines, as the statute does not permit changing the rent increase formula unless Special Rent Increases are permitted by the terms of the statute. (Comment made in connection with Section 108 (a) (4)(A)(vii).	This change was proposed in part for ease of administration, and the impact on tenants would have been limited. However, HCD understands the view that it is not expressly authorized by the statute, and is proposing to revert to the original language, as suggested.
<b>Section 101(j)</b>	
CEI: Limited liability corporation should be corrected to read limited liability company.	Agreed. This change has been made.
<b>Section 102: Eligible Projects</b>	
<b>Section 102(c)</b>	
CEI, Mercy: Add language to guidelines to make this section subject to subsequent legislative changes concerning matured loans.	It would be premature to attempt to conform these guidelines to potential statutory changes. If legislation is enacted on this subject that does not require interpretation through guidelines, HCD will be able to implement it without amending the guidelines.
<b>Section 102(d)</b>	
CEI, Mercy: Allow director of HCD to waive any of the requirements	HCD would like to avoid a case-by-case determination on this

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pertaining to combining a Department-assisted project with other developments.	subject, and is therefore not proposing to institute a waiver process.
MidPen: Allow more flexibility with scattered site projects—don't require HCD loan to be secured against all parcels.	HCD has difficulty with the notion that it should treat scattered sites as one project without some substantial commonality in the financing for all sites, including HCD having a security interest in all of them. No change is being made.
CHPC: Only require the HCD Deed of Trust to be secured against all parcels, but not the Regulatory Agreement.	The specific issue that has been identified related to HCD's regulatory agreement is the potential for a reduction in residual receipts loan payments on locality loans. HCD has addressed this issue in 102(d)(4), by proposing to adjust its payment requirements as needed to prevent a reduction in payments to local lenders. A conforming change is also proposed to 114(b).
<b>Section 103 Requirements for Loan Extensions Only</b>	
<b>Section 103(a)</b>	
BRIDGE: Allow extensions for less than 10 years.	The statute requires that extensions be for a period of at least 10 years.
CEI: Allow extensions to be for as much as 58 years.	The statute limits the length of extensions to 55 years unless the project is receiving tax credits, and in those cases, the limit is 58 years. Since this section pertains to projects that are not receiving tax credits, the limit is 55 years. No change is being made.
<b>Section 103(b)</b>	
Abode: Allow fiscal integrity to be used for all projects, not just RHCP-O.	The statute restricts the increases in Rent for existing assisted households, so no change can be made on this subject.
BRIDGE: Allow Special Rent Increases for projects seeking only extensions of the HCD loan (no refi or syndication), to achieve long-term sustainability.	<p>The statute provides that Rents may be adjusted "to the minimum extent necessary to support new debt to pay for rehabilitation." It does not provide for Rent increases in cases where these increases are not necessary to enable rehabilitation.</p> <p>However, HCD recognizes that persistent operating deficits in efficiently managed properties are not in the long-term best interests of their residents, and it is looking at a system for</p>

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	addressing these deficits in a manner consistent with current statutes.
<b>Section 104 Requirements Pertaining to All Projects Restructured Under this Chapter</b>	
<b>Section 104(a)</b>	
CEI: Add language to make it clear that the operating reserve requirements set forth in section 103(d) will continue to apply.	Agreed, HCD is proposing to add language to this effect.
<b>Section 104(b)</b>	
Abode: Allow forgiveness of accrued interest if statute allows.	Not permitted by statute.
<b>Section 104(c)</b>	
<b>Western Center:</b> Give new tenants third-party beneficiary rights too, so they can enforce the regulatory agreement, as well as HCD. Western Center points out that the HCD wrote: “the process of converting the older projects to an AMI-based system under these guidelines introduces a substantial additional element of complexity...at least until rents for existing tenants have reached their ultimate AMI restriction level.”, and that tenants are best suited to enforcing rules regarding rent increases.	HCD has operated programs with and without provisions granting tenants third party beneficiary rights for many years. We are not aware of any instances where the presence of these rights has resulted in beneficial outcomes. Existing tenants will continue to have third-party beneficiary rights. HCD has some concern about them being about them being used inappropriately in landlord - tenant disputes.
<b>Section 106 Conditions on Subordination to Senior Loans</b>	
<b>Section 106(b)</b>	
CEI, Mercy, Mid Pen, Sabelhaus and BRIDGE: Allow reimbursement of prior sponsor advances for capital improvements and operating deficits even if there is a Special Rent Increase.	The statute (section 50560(g)) doesn't permit any additional amount of senior debt over the amount needed to finance rehabilitation. In addition, the statute (section 50560(f)) restricts HCD from subordinating to a loan that exceeds the amount required to increase feasibility and to fund reasonable rehabilitation if Special Rent Increases are being imposed. Therefore, no sponsor advances are permitted to be repaid if there are Special Rent Increases being imposed. No change is being made to this section.

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CEI, BRIDGE, Mercy, Sabelhaus and CHPC: Allow limited partner buyout costs to be eligible for inclusion in the project costs	Same response as above. Limited partner buy-out costs are not costs directly tied to rehabilitation.
CEI, BRIDGE, Mercy, MidPen: Also allow recapitalization of reserves, repayment of must-pay debt and other project costs required for feasibility to be included in the project costs.	Same response as above.
Mercy: Don't limit the rehab to "modest" due to unanticipated needs like major earthquake retrofits, major water intrusion repairs, elevation out of floodplain.	HCD would allow inclusion of critically required work costs, such as earthquake retrofits and water intrusion repairs, so no change is necessary, and the statute requires the rehab to be modest. No change is being made.
<b>Section 106(c)</b>	
BRIDGE: Allow 36 months of capital improvement expenses to be reimbursed when no Special Rent Increases are being imposed.	HCD does not find that a 36 month look back is warranted, and would be administratively burdensome as well.
CEI, Mercy, MidPen: Allow 24 months of operating deficits to be reimbursed, the same number of months as for capital improvement expenses reimbursement.	Agreed. This change is made.
<b>Section 108 Rent Restrictions for Assisted Units</b>	
<b>Section 108(a)</b>	
Western Center: Projects that don't require Special Rent Increases are required by statute to continue adhering to the original program rules regarding rent increases.	See response to Western Center's comments on 101(i). HCD is now proposing to keep the existing rent regulatory framework in place, where a Special Rent Increase is not approved.
BRIDGE: Change language to reference increases in area median income, using the rules of the low-income housing tax credit program for setting Rent increases.	This change would only make sense if rents were to be increased based on area median income. Since the current proposal is to continue to increase rents based on the CPI, no change is proposed.
<b>Section 108(b)(1)</b>	
BRIDGE: Special Rent Increases should be permitted even for extensions only.	The statute provides that rents may be adjusted "to the minimum extent necessary to support new debt to pay for rehabilitation." It does not provide for rent increases in cases where these increases are not necessary to enable rehabilitation. No change is made.

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<b>Section 108(b)(3)</b>	
<p>BRIDGE and CHPC: Required level of rehab should be the level required under the specific tax credit program (if project is receiving 4% tax credits, then the amount required under the 4% program).</p>	<p>The intent of the statutory provision is to prevent tenants from having to endure significant rent increases unless they receive the benefit of significant rehabilitation. When the legislation was being negotiated, it was deemed that the \$20,000 per unit threshold included in TCAC' s regulations would accomplish this objective. However, TCAC has subsequently increased this threshold to \$40,000 per unit, and it has come to light that this threshold applies only to projects utilizing 9% credits. Projects receiving 4% credits require only \$10,000 in rehab per unit, which is below the level most would consider consistent with significant rehabilitation.</p> <p>HCD considered proposing that the 9% standard (currently \$40,000 per unit) be used for this purpose, but believes that this would eliminate a number of projects with significant rehab needs, and motivate sponsors to propose higher than necessary levels of rehabilitation. Instead, it is now setting the minimum for AB 1699 restructurings at the average of the minimum requirements for 9% and 4% projects, which currently is \$25,000. This approach ensures that tenants will receive significant rent increases only when there are truly significant improvements made to their housing, while not requiring that these improvements reach the very high level now required for 9% credits. No change is being made to this section.</p>
<b>Section 108(b)(4)</b>	
<p>CEI, MidPen, Mercy: Allow Special Rent Increases to be implemented on a pro rata basis on the date of closing of the restructured loan if required by lenders or investors.</p>	<p>HCD believes it more appropriate to begin increases in accordance with the normal annual schedule for doing this, as is typically provided for in tenant leases. The economic impact of keeping to the normal schedule will be limited. No change is being made.</p>

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<b>Section 108(b)(4)(A)</b>	
CEI, MidPen, Mercy: Allow the five year period of Early Special Rent Increases to be extended by HCD if necessary.	HCD is of the opinion that five years is long enough to increase rents without performing the rehab that justified the rent increase. No change is being made.
<b>Section 108(b)(4)(A)(i)</b>	
CEI, MidPen, Mercy: A preliminary cost estimate from a construction contractor is required as part of the application for Early Special Rent Increases, but is unnecessary because a PNA is required.	Before asking tenants to absorb large, painful rent increases, HCD believes that it is important to get as accurate a handle as possible on the expected cost of the necessary rehab, and therefore on the magnitude of the required rent increases. Obtaining a contractor's estimate is one way of checking the estimates in the PNA. For this reason, HCD believes that it is worth the time and effort to obtain. No change is being made.
<b>Section 108(b)(4)(A)(iii)</b>	
CEI, MidPen, Mercy: HCD should explicitly allow the existing senior lender to hold additional rental income generated by the Early Special Rent Increases.	The language as drafted does not rule this out. HCD's current plan is to hold the funds itself. No change is being made.
CEI, MidPen, Mercy: If the planned rehabilitation does not occur within the five year deadline for Early Special Rent Increases, allow other uses for the additional rental income generated, such as recapitalizing reserves, debt repayment and other project costs required for feasibility	HCD is required by statute to make sure that the income generated by Special Rent Increases is used for rehabilitation and repairs. It expects that any project that truly needs rehabilitation will need this incremental income for priority repairs, if the planned financial transaction fails to occur. In the unlikely event that the full amount is not needed for repairs, HCD believes that the remainder should be remitted to the tenants, to make up for the extra rent they paid that did not result in better living conditions. No change is being made.
BRIDGE: If the planned rehabilitation does not occur within the five year deadline for Early Special Rent Increases, allow the rent increases to continue if there are urgent, critical repairs or to replenish reserves.	HCD does not believe that tenants should have to endure large rent increases for more than five years without there being significant rehab. Also, the incremental revenue resulting from these Special Rent Increases will be available for urgent repairs, should the larger project fall through.

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<b>Section 108(b)(4)(A)(viii)</b>	
CEI, MidPen, Mercy, BRIDGE, Abode, CHPC, Sabelhaus: Don't restrict allowable developer fee when there are Early Special Rent Increases to 50% of amount allowed by TCAC under 9% tax credit program because struggling projects take even more work.	The statute limits Special Rent Increases to the lowest amount that is demonstrated as needed for fiscal integrity so that tenants don't receive higher increases than necessary. HCD understands that in some projects, Rents are so low that the 5% and 10% annual Rent increases are such low amounts that the project doesn't qualify for a loan to perform needed rehab. For that reason, HCD has permitted five years of Early Special Rent Increases prior to the beginning of rehabilitation, so that the rents get to the level where a lender is willing to make a loan. However, due to the fact that the tenants are paying the increases for several years without having the benefit of rehab, HCD believes that the sponsor should also share in this less-than-ideal situation and not receive the full developer fee. No change is being made.
CHPC and Abode: If developer fee is limited to 50% of the amount allowed by TCAC, allow sponsor to donate half of the full fee back to project so that the basis isn't reduced, which harms the project's rehab plan.	HCD understands the reduction to basis that would occur if the developer fee was reduced by 50%, and agrees that if the sponsor makes a contribution to the project, that only the net developer fee shall be reduced to 50% of the amount otherwise allowable by TCAC. Change proposed.
<b>Section 108(c)(1)(A)(ii) and 108(c)(2)(A)(ii)</b>	
Goldfarb & Lipman: Since relocation law is very complex, we recommend that you add a sentence to this section stating that the Borrower shall comply with the requirements of California Relocation Law in regards to any rent increases for existing tenants who are temporarily displaced as a result of rehab.	Agreed. This change has been made, through the addition of subsections 108(c)(1)(A)(vii) and 108(c)(2)(A)(vii).
BRIDGE: Add the words "at the time of application for restructuring", to better describe the point in time at which the incomes are being measured to determine whether a 5 percent or 10 percent annual increase is permitted.	Agreed in principle. The statute requires that this determination be made at the time of Department approval of the restructuring, so HCD has included the statutory language.
<b>Section 108(c)(1)(A)(iv) and (v)</b>	
Western Center: These sections would allow Rents for existing tenants to eventually increase beyond 50% of actual household income, which is not permitted by AB 1699.	HCD agrees that keeping Rent below 50% of income is an important policy objective, provided that increases in tenant income over time are taken into account. To enable projects to

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	secure resources required for rehabilitation, and to enable them to reliably cover operating expenses, it is also important to set Rents in a manner that produces a relatively predictable income stream. To balance these objectives, HCD is now proposing to revise this section to prohibit Rent increases for existing tenants from ever resulting in Rent payments of more than 50% income, with income determined initially before any Special Rent Increases begin and then again if and when the initial 50 percent of pre-restructuring income limit is reached.
<b>Section 108(c)(2)</b>	The issues raised by comments on (c)(1) apply equally to (c)(2), so HCD proposes to make identical conforming changes to it as well.
<b>Section 108(c)(2)(B)</b>	
CADA: We are concerned that the reference to “or as specified in the Original Program Regulatory Agreement” would require us to restrict all of our “Very Low Income” units to the “MHP-B” level.	This reference applies only to units restricted in the Original Program Regulatory Agreement to the “MHP-B” level. It does not apply to “Very Low Income” units, which have higher income limits. No guideline change is necessary.
<b>Section 108(c)(3)</b>	
Western Center: RHCP-O projects are subject to all parts of 1699. The Rents can’t be increased based on fiscal integrity.	Under RHCP-O, annuity (operating subsidy) payments are made from a one-time appropriation that will eventually be depleted. HCD had proposed allowing rents to be reset upon depletion of these funds, if necessary for the project to break even, as a way to encourage owners to extend their expiring RHCP-O loans, and to keep the maximum possible affordability in place. However, it acknowledges that the statute does not provide clear authority for this solution. Due to some unexpected loan repayments, it also now expects the annuity funds to last longer than previously projected, which allows for more time to develop long-term solutions. For these reasons, it is now proposing to strike the provision allowing rents to increase as needed for fiscal integrity, and to revise Section 109 to allow for annuity payments to

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	continue beyond the end of the original RHCP-O regulatory agreement term.
<b>Section 109(a)</b>	The change to this subsection is being proposed in response to Western Center’s comment on 108(c)(3), as described above.
<b>Section 109(b)</b>	
CADA: For RHCP-O, this subsection requires Rent to increase to 30% of tenant income following a restructuring. How does the requirement relate to the phased rent increases being implemented to correct an error in calculating RHCP-O “Base Rent?”	This is an implementation issue impacting a handful of projects, and will be addressed based on the particulars of the situation. No guideline change is necessary.
<b>Section 110 Requirements for Relocated Existing Households</b>	
CEI and BRIDGE: There needs to be clarification that the requirements of this section pertain only to temporary relocation of tenants, not permanent relocation.	Upon reflection, HCD believes that Section 110 is not needed, as its main goal was to remind sponsors that they need to comply with state relocation law. Accordingly, HCD proposes to delete it. As noted in subsections 108(c)(1)(A)(vii) and 108(c)(2)(A)(vii), nothing in these guidelines exempts sponsor from adhering to state relocation law.
BRIDGE: Change the wording governing the timing of requirements imposing the tenant noticing to households residing in the project on the date that a restructuring request is <u>implemented</u> , rather than the date the restructuring request is <u>submitted</u> .	See above. State relocation law will determine the timing of tenant notices.
CEI and Mercy: There seems to be some confusion about the requirements for permanent versus temporary relocation.	See response to CEI and BRIDGE comment, above.
Goldfarb & Lipman: Language seems to indicate that tenants who move in during the five year period of Early Special Rent Increases are not eligible for relocation benefits. I don’t think that is the intent.	See response to CEI and BRIDGE comment, above.
<b>Section 110(a)</b>	
MidPen : Make it clear that this subsection refers to temporary relocation only.	See response to CEI and BRIDGE comment, above.

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<b>Section 110(b)</b>	
Goldfarb & Lipman: Add “et seq” to the reference to section 7260 to reference State relocation law.	See response to CEI and BRIDGE comment, above.
<b>Section 112 Underwriting Requirements</b>	
<b>Section 112(a)</b>	
BRIDGE: Base replacement reserve deposit requirements on a physical needs assessment and replacement reserve analysis over 15 years of operations, not 20.	HCD does not agree. The twenty year period represents a compromise between the ideal of a permanently sustainable building, which would require a longer look, and the reality of budget constraints. It is intended to be long enough to capture at least some of the replacements that typically begin being needed around year 15, but could arguable be omitted from an analysis lasting just that long. No change is being made
<b>Section 112(b)</b>	
CEI, Mercy, MidPen: Allow for master leases to be used to determine the vacancy rate projections, not just operating history.	Agreed. This change is being made.
<b>Section 112(d)</b>	
Sabelhaus: HCD should allow a minimum debt service coverage ratio (DCR) of 1.20, as opposed to this being the maximum, so that lenders can work with HCD funded projects. Lenders require a minimum DCR of 1.20 or they do not allow the permanent loan conversion to take place.	HCD agrees that its programs need to allow projects reasonable access to other funding sources. It does not believe it has encountered situations where its current limit on debt service coverage has prevented a project from accessing private debt. However, it does plan to address this general issue, through planned revisions to the Uniform Multifamily Regulations.
<b>Section 112(e)</b>	
CEI: Don’t require project based rental assistance to be renewable in order to reset rents at higher levels than permitted by section 108 if the rental assistance is lost.	Agreed. This change has been made.
<b>Section 112(f)</b>	
CEI, Mercy, Abode, Sabelhaus and MidPen: Apply developer fee limit to “Net	Agreed. This change has been made. The intent was to limit the

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Developer Fee”.	fee the developer is able to keep.
<b>Section 112(g)</b>	
BRIDGE: Change the word “prohibited” to “allowable” in: Balloon payments are allowable if the Project demonstrates...”	This would not change the meaning of this provision. No change is being made.
CHPC: We understand HCD is considering removing or relaxing restrictions on balloon payments in the revisions to the UMRs, and since those revisions may be more favorable, we recommend deletion of the prohibition language, or that there is a general reference to the UMRs so that requirements are consistent between the UMRs and these guidelines.	HCD does not contemplate modifying the UMRs in a manner that would conflict with the very general statement in this subsection. If HCD ends up incorporating more specific evaluation standards in the UMRs, there would not be a barrier to using them for AB 1699 transactions. No change is proposed.
Sabelhaus: Most projects are being financed currently with a call at year 17. Alternative loans require interest rates that are higher and less workable for restructuring.	The proposed guidelines allow balloon payments subject to certain conditions.
<b>Section 112(h)</b>	
CEI, Mercy, MidPen: Allow a common situation to be permitted, wherein there is a technical “cash to seller” as part of the sale of a project to a new partnership in order to meet the 50% test for tax-exempt bonds. However, this is not a real cash payment to the seller. Typically, lenders and investors require these funds to be held in a restricted account until they are re-contributed by the sponsor at perm loan conversion. We think this practice is consistent with the spirit of this section.	Agreed, this change will enable projects to proceed without adversely impacting tenants. It is being proposed.
Abode: Strong projects should not be limited by restrictions on cashing out equity.	The bar on cash out is designed to minimize rent increases and use of resources in a manner that does not directly benefit tenants. No change is proposed.
CEI: Don’t limit sponsor loans, including carryback financing, to being paid only out of sponsor distributions.	This is required by the UMRs, and has not been an issue in transactions where they apply. Our understanding is that carryback loans are typically payable only out of distributions. No change is being made in response to this comment.
<b>Section 113 Department Fees</b>	
<b>Section 113 (b)</b>	
CEI: These fees are still very high and growing, and we encourage HCD to	HCD has taken steps to reduce its costs, such as the changes

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<p>explore fundamental changes to its monitoring practices and costs to reduce these fees, which are higher than any other public agency monitoring fees we've encountered. The practices are duplicative of other agency monitoring. The fees will limit sponsors' ability to borrow and put additional pressure on rents.</p>	<p>included in recent revisions to the HCD-CalHFA audit handbook, and more coordination with TCAC on site visits, and is interested in pursuing other cost savings measures as well (specific suggestions are welcome). Unfortunately, the process of converting the older projects to an AMI-based system under these guidelines introduces a substantial additional element of complexity, and hence increases monitoring costs rather than reduces them, at least until Rents for existing tenants have reached their ultimate AMI restriction level. Also, keeping the CPI-based rent adjustment formula for projects without Special Rent Increases, will add to administrative complexity.</p>
<p>Mercy, BRIDGE: Hold the fees flat until a cost assessment can be conducted to determine an appropriate escalation increase. The assessment should be no later than 2020.</p>	<p>HCD proposes to use the same inflation-based escalation factor as it intends to propose for escalating sponsors' asset management and partnership management fees. As noted in connection with the previous comment, it is taking steps to reduce its overall monitoring costs, but given the complexity of the AB 1699 framework it doubts that it will be possible to keep the growth in costs for overseeing this portion of its portfolio below the general inflation rate. No change is proposed.</p>
<p>BRIDGE: Suggested language changes for greater clarity: "if the monitoring fee is paid annually (rather than in "annual installments").</p>	<p>Agreed. These language changes have been made to improve clarity.</p>
<p>Abode: We appreciate the flexibility added, but these fees will be an impediment to rehabilitation of properties. We hope that HCD will ensure that projects' feasibility is not impacted by these fees.</p>	<p>HCD has included provisions for waiving and deferring fees in recognition of the importance of not harming project feasibility.</p>
<p>Sabelhaus: 1) Monitoring fees of \$5,000 to \$15,000 is too high, plus a 3 percent increase for inflation each year, while 2) HCD ties Rent increases to CPI, which in years past has been much lower than 3 percent.</p>	<p>1) Please see response to CEI comment above; 2) HCD agrees that using the CPI to adjust the fee would more accurately reflect changes in HCD's costs, and is proposing this change.</p>
<p><b>Section 113(c)</b></p>	
<p>CEI, Mercy: We appreciate that the revision to this subsection provides another option for sponsors that may be beneficial to some projects. However, generally, tax credit investors expect to receive their monitoring fee first in the cash flow waterfall and have shown little to no willingness to back</p>	<p>The HCD monitoring fee was originally proposed to be equivalent to debt service, not to be paid from cash flow. The proposed change was intended to reduce the underwriting issues associated with this arrangement, but may not mitigate all of them. Investors</p>

Comment	Response
away from that. Investors also have other considerations such as advances and tax credit adjusters that may require more flexibility than is proposed.	may well need to treat the HCD as the equivalent of debt service. No change is proposed.
BRIDGE: TCAC should be consulted as to the requirement in the revised subsection for the HCD monitoring fee to be the first use of cash flow, before deferred developer fee.	HCD recognizes that making the fee payable on a priority basis out of cash flow may limit the ability to project payment of deferred developer fees. Sponsors and investors will need to take this into consideration. HCD has had general discussions with TCAC about its proposal.
Abode: While adding this provision is a positive step, the HCD monitoring fee should have a lower priority than deferred developer fee and asset management and partnership management fees. Investors insist on their fees being paid.	See responses to CEI and BRIDGE comments, above.
<b>Section 113(d)</b>	
BRIDGE: The required discount rate for prepaying the monitoring fee, plus the escalation factor discussed earlier, creates an amount that is exceedingly large. This would jeopardize the feasibility of the transaction. Also, the Applicable Federal Rate (AFR) should be substituted for the State Money Investment Fund (SMIF) rate.	HCD chose the SMIF rate because that is the rate that our reserves actually earn, not the AFR. If the AFR rate was used, it would unrealistically reduce the net present value of the monitoring fee to be paid over time, and since for most projects the monitoring fee isn't required to be paid for about 30 years in the future, it's critical to accurately predict the net present value. No change is being made.
<b>Section 113(f)</b>	
CEI,CHPC: Allow HCD to waive or defer its monitoring fees if developer fee is at maximum allowable level.	The intent was to allow HCD to waive its fee to the extent necessary to allow for project feasibility and for the developer to receive some reasonable level of compensation, not to allow developers to always receive the maximum possible developer fee. No change is proposed.
Mercy: Give consideration to projects with deferred developer fees.	If the project has the ability to pay significant deferred developer fees, it should be able to pay HCD's monitoring fee, and not need a waiver.
BRIDGE: Apply limit on developer fee to "net" fee.	Agreed, this is consistent with the changes proposed to 112(c).
CEI: Add the words "or would not achieve Fiscal Integrity" to clarify what "infeasible" means in the sentence in (f)(3): "Without the deferral or waiver of	HCD agrees that it would be better to specify this standard more precisely. "Fiscal Integrity" means breakeven (1.0 DSCR), however,

Comment	Response
the monitoring fees, the project would be infeasible or would not achieve Fiscal Integrity”.	and is too limiting for this purpose. Instead, HCD is proposing to reference the underwriting requirements set forth in these guidelines.
<b>Section 113 (i)</b>	
CHPC, BRIDGE: Set transaction processing fee for subordinations at \$4,000, instead of \$39,000.	HCD has as had a number of subordination-only transactions (without tax credits) that have been extremely time-consuming, and needs to charge a fee to cover its estimated costs. No change is proposed.
<b>Section 114 (b)</b>	The proposed change conforms this section to the changes proposed in Section 102(d), regarding combining sites.