

# MULTIFAMILY HOUSING PROGRAM (MHP) REGULATIONS

## California Code of Regulations, Title 25

### Division 1

### Chapter 7

### Subchapter 4

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## Article 1. General

### Section 7300. Purpose and Scope.

- (a) These regulations implement and interpret Chapter 6.7 (commencing with Section 50675) of Part 2 of Division 31, Health and Safety Code, which establishes the Multifamily Housing Program.
- (b) These regulations establish terms, conditions and procedures for funds awarded after the effective date of these regulations.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50406 and 50675, Health and Safety Code.

### Section 7301. Definitions.

In addition to the definitions found in Chapter 2 (commencing with Section 50050), of Part 1 of Division 1 of the Health and Safety Code, and Health and Safety Code Section 50675.2, the following definitions shall apply to this subchapter. In the event of a conflict between the following definitions and those cited above, the following definitions prevail for the purposes of these regulations. The defined terms will be capitalized as they appear in the regulation text. References to code sections refer to sections of these regulations unless otherwise noted:

- (a) "Affordable Rents" means Rents established for Assisted Units in accordance with Section 7312.
- (b) "Area Median Income" means the most recent applicable county median family income published by the Department in amendments to Section 6932 of this title.
- (c) "Article XXXIV" means the Article of the California Constitution (Health and Safety Code Section 37000) that requires advance voter approval of certain publicly funded low-rent housing Projects.
- (d) "Assisted Unit" means a Unit that is affordable to a lower income household as a result of a loan provided pursuant to the Program, as specified in the Regulatory Agreement.
- (e) "Commercial Space" means any nonresidential space located in or on the property of a Rental Housing Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which is to be included in Operating Income.

- (f) "CPI" means the Consumer Price Index for All Urban Consumers, West Region, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor. In the event that such index is no longer published or available, the Department shall designate an alternative index reasonably reflecting the same factors as the CPI.
- (g) "Debt Service Coverage Ratio" means the ratio of (1) Operating Income less the sum of Operating Expenses and required reserves to (2) debt service payments, excluding voluntary prepayments and non-mandatory debt service.
- (h) "Department" means the Department of Housing and Community Development.
- (i) "Disabled Household" means a household in which a member is suffering from an orthopedic disability impairing personal mobility or a physical disability affecting his or her ability to obtain employment, or in which a person requires special care or facilities in the home. "Disabled Household" also includes a household in which a member suffers from a developmental disability specified in subdivision 4512(a) of the Welfare and Institutions Code, or a mental disorder, which would render him or her eligible to participate in programs of rehabilitation or social services conducted by or on behalf of a public agency, or a single person with such a developmental disability or mental disorder.
- (j) "Distributions" means the amount of cash or other benefits received from the operation of a Rental Housing Development and available to be distributed pursuant to Section 7313 to the Sponsor or any party having a beneficial interest in the Sponsor or the Project, after payment of all due and outstanding obligations incurred in connection with the Rental Housing Development. Distributions do not include payments for: non-contingent debt service, approved reserve accounts established to prevent tenant displacement resulting from the termination of rent subsidies, operations, maintenance, payments to required reserve accounts, land lease payments to parties that do not have a beneficial interest in the Sponsor entity, or payments for property management or other services as set forth in the Regulatory Agreement for the Rental Housing Development. Partnership management fees, deferred developer fees, asset management fees, guarantee fees, and similar compensation provided to the Sponsor or any party having a beneficial interest in the Sponsor or the Project shall be paid from Distributions or from sources other than Operating Income.
- (k) "Dwelling Unit" or "Unit" means a residential Unit that is used as a primary residence by its occupants, including Efficiency Units, Residential Hotel Units, and Units used as Transitional Housing. For purposes of calculating Program loan amounts and for the purpose of determining compliance with Program requirements that a Rental Housing

Development contain 5 or more Units, a single-family house is considered to be one Unit, and an apartment Unit in an apartment building is considered to be one Unit regardless of the number of bedrooms within the apartment Unit.

- (l) “Efficiency Unit” means a Dwelling Unit containing only one habitable room. A room in a structure that is a single-family house at the time of application will not be considered to be an Efficiency Unit eligible for program funds.
- (m) "Eligible Households" means households whose incomes do not exceed the income limits specified by TCAC or other, lower income limits agreed to by a Project Sponsor and the Department. In non-Special Needs Population Projects, household income will be calculated on the basis of Dwelling Units in accordance with TCAC rules and procedures. In Special Needs Populations Projects, household income may be calculated on the basis of bedrooms within a single-family house and bedrooms within an apartment Unit, provided all Project Dwelling Units are located on the same parcel or on contiguous parcels and the bedrooms are: (1) occupied by a single individual who is a member of a Special Needs Populations, or an individual member of a Special Needs Populations and his or her relatives or caretaker and (2) subject to an individual rental or occupancy agreement. In transitional Special Needs Populations Projects, household income may be calculated on the basis of each occupant of each bedroom provided all Project Dwelling Units are located on the same parcel or on contiguous parcels and no more than 2 unrelated persons are occupying a bedroom.
- (n) "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) fully fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement; and (4) pay other extraordinary costs permitted by the Regulatory Agreement. The ability to pay any or all of the permitted annual Distributions shall not be considered in determining Fiscal Integrity.
- (o) "Fund" means the Housing Rehabilitation Loan Fund established pursuant to Section 50661 of the Health and Safety Code.
- (p) "Initial Operating Year" means the initial period of operation of the Rental Housing Development, beginning at the time of the initial occupancy of the completed Project and ending on the last day of the fiscal year for the development.
- (q) “Manager’s Unit” means a Dwelling Unit in which the on-site manager of the Project resides. A Manager’s Unit will not be considered to be an MHP Assisted Unit, nor will it be considered to be a Restricted Unit for

the purpose of calculating allowable Distributions. A Manager's Unit will be considered to be a Restricted Unit for the purpose of allocating development costs and may qualify for a loan amount up to the amount applicable to the 60% of AMI level.

- (r) "Nonprofit Corporation" means the same as defined in Section 50091 of the Health and Safety Code.
- (s) "Operating Expenses" means the amount approved by the Department that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management, taxes, licenses, and the cost of on-site supportive services coordination, but not including debt service, required reserve account deposits, or other supportive services costs.
- (t) "Operating Income" means all income generated in connection with operation of the Rental Housing Development including rental income for Assisted Units and non-Assisted Units, rental income for Commercial Space, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Rental Housing Development. "Operating Income" does not include security and equipment deposits, payments for supportive services, or tax benefits received by the Sponsor.
- (u) "Program" means the Multifamily Housing Program.
- (v) "Project" means a Rental Housing Development, and includes the development, the construction or Rehabilitation, and the operation thereof, using Program funds, and the financing structure and all agreements and documentation approved in connection therewith.
- (w) "Refinance" means to pay off all or a portion of existing debt secured by the Project with the proceeds of a Program loan or other financing also secured by the Project.
- (x) "Regulatory Agreement" means the written agreement between the Department and the Sponsor that will be recorded as a lien on the Rental Housing Development to control the use and maintenance of the Project, including restricting the Rent and occupancy of the Assisted Units, in accordance with Section 7312(b).
- (y) "Rehabilitation" means the term as defined in Section 50096 of the Health and Safety Code, including improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability.
- (z) "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, plus a utility allowance established in accordance with TCAC regulations.

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

- (aa) "Rent-Up Costs" means costs incurred in connection with marketing and preparing an Assisted Unit for occupancy while the Unit is on the housing market but not yet rented to its first tenant.
- (bb) "Rental Housing Development" means a structure or set of structures with common financing, ownership, and management and which collectively contains 5 or more Dwelling Units. Rental Housing Development does not include any "health facility" as defined by Section 1250 of the Health and Safety Code or any "alcoholism or drug abuse recovery or treatment facility" as defined by Section 11834.02 of the Health and Safety Code.
- (cc) "Residential Hotel" means any building that contains 6 or more Residential Hotel Units, where a majority of the Units are Residential Hotel Units. Single-family houses are not considered Residential Hotels.
- (dd) "Residential Hotel Unit," also referred to as a single room occupancy Unit or an SRO, means an Efficiency Unit that: (1) is occupied as a primary residence, and (2) is subject to state landlord-tenant law pursuant to Chapter 2 (commencing with Section 1940) of Title 5 of Part 4 of Division 3 of the Civil Code. The term also includes a Unit in an "SRO Project" as described in California Code of Regulations, Title 4, Section 10325(g)(3).
- (ee) "Restricted Unit" means any Assisted Unit and any Unit that is subject to Rent and occupancy restrictions that are comparable to those applicable to Assisted Units. Restricted Units include Units subject to a TCAC Regulatory Agreement, and all Units subject to similar long-term, low-income restrictions imposed by other public agencies.
- (ff) "Rural Area" means the same as defined in Section 50199.21 of the Health and Safety Code.
- (gg) "Special Needs Populations" means Disabled Households, agricultural workers, single-parent households, victims or survivors of domestic or physical abuse, households enrolled in Welfare-to-Work programs, homeless persons or persons at risk of becoming homeless, chronically ill persons including those with HIV and mental illness, displaced dependent parents (or expectant dependent parents), emancipated foster youth, individuals exiting from institutional settings, chronic substance abusers, or other specific groups with unique housing needs as determined by the Department. "Special Needs Populations" do not include seniors or the frail elderly unless they otherwise qualify as a Special Needs Population.

- (hh) “Sponsor” means the legal entity or combination of legal entities with continuing control of the Rental Housing Development. Where the borrowing entity is or will be organized as a limited partnership, Sponsor includes the general partner or general partners who have effective control over the operation of the partnership, or, if the general partner is controlled by another entity, the controlling entity. Sponsor does not include the seller of the property to be developed as the Project, unless the seller will retain control of the Project for the period of time necessary to ensure Project feasibility as determined by the Department.
- (ii) "State Median Income" means the most recent total median family income for California issued by the federal Department of Housing and Urban Development (“HUD”).
- (jj) "Substantial Rehabilitation" means a Rehabilitation Project where the contract for Rehabilitation work equals or exceeds \$25,000 per Unit.
- (kk) “TCAC” means the California Tax Credit Allocation Committee.
- (ll) "Transitional Housing" means a Rental Housing Development operating under programmatic constraints that require the termination of assistance after a specified time or event, in no case less than 6 months after initial occupancy, and the re-renting of the Assisted Unit to another eligible participant.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675, 50675.1(c), 50675.2, Health and Safety Code.

## Article 2. Program Requirements

### Section 7302. Eligible Project.

- (a) Proposed Projects are eligible only if:
  - (1) the Project includes the new construction or Rehabilitation of a Rental Housing Development (see definition Sections 7301(k) “Dwelling Unit” and (bb) “Rental Housing Development”) or conversion of a nonresidential structure to a Rental Housing Development;
  - (2) other development funding sources are insufficient to cover Project development costs; and
  - (3) at the time of the application due date, the construction or Rehabilitation work has not commenced, except for emergency repairs to existing structures required to eliminate hazards or threats to health and safety.

(b) Proposed Projects involving new construction and requiring the demolition of residential rental Units are eligible only under the following circumstances:

- (1) the Units to be demolished are substandard and not economically feasible to rehabilitate, or the number of Restricted Units in the new Project is at least equal to the total number of Units in the demolished structures. The new Restricted Units may exist on separate parcels provided all parcels are part of the same Rental Housing Development (with common ownership, financing and management); and
- (2) the Sponsor complies with the relocation requirements set forth in Section 7315.

This subsection shall not be construed to prohibit a reduction in the number of Units in Rehabilitation Projects.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.2(d), 50675.4, 50675.7, Health and Safety Code.

#### Section 7303. Eligible Sponsor.

- (a) A Sponsor shall be any individual, joint venture, partnership, limited partnership, trust, corporation, limited liability corporation, local public entity, duly constituted governing body of an Indian reservation or rancheria, or other legal entity, or any combination thereof which meets the requirements of subsection (c), below.
- (b) A Sponsor shall be organized on a for-profit, including limited profit, or nonprofit basis.
- (c) In order to be eligible for funding, a Sponsor must:
  - (1) demonstrate experience relevant to owning and developing affordable rental housing through one or more of the following:
    - (A) successful prior ownership and development of affordable rental housing;
    - (B) employment of a staff with demonstrated experience owning and developing affordable rental housing; and
  - (2) have site control of the proposed Project property by one of the following means, in the name of the Sponsor or an entity controlled by the Sponsor:
    - (A) fee title;

- (B) a leasehold interest on the Project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit compliance with all Program requirements;
  - (C) an enforceable option to purchase or lease which shall extend, or may be extended, for a minimum of 3 months beyond the deadline for application submittal (options of less than 3 months may be acceptable if the Sponsor provides evidence satisfactory to the Department that it has sufficient committed financing to acquire the property prior to expiration of the option);
  - (D) a disposition and development agreement with a public agency;
  - (E) an agreement with a public agency that gives the Sponsor exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties; or
  - (F) a land sales contract, or other enforceable agreement for the acquisition of the property.
- (d) Where 70% or more of the Dwelling Units are reserved for Special Needs Populations, the Sponsor may qualify for development or ownership experience required by subsection (c)(1), above, by demonstrating that the Sponsor has experience owning and developing affordable rental housing or operating and developing affordable rental housing through the following:
- (1) the Sponsor may qualify for development experience by contracting with a developer or development consultant for the provision of comprehensive development management services, provided that the Sponsor and the contractor have entered into an agreement acceptable to the Department making the contractor responsible for financial packaging, selection of other consultants, selecting the general construction contractor and property management agent, oversight of architectural design, construction management, and other major aspects of the development process; and
  - (2) the Sponsor may qualify for ownership experience if the role and responsibility of the Sponsor in the Projects submitted for such experience is commensurate with the ownership role and responsibilities in the proposed Project.

- (e) If the Sponsor is a joint venture, and qualifies as an eligible Sponsor under the preceding subsections based on the experience of only one joint venture partner, that partner must have a controlling interest in the joint venture and a substantial and continued role in the Project's ongoing operations, as evidenced in the documents governing the joint venture.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.6 and 50675.7(c)(3), Health and Safety Code.

#### Section 7304. Eligible Uses of Funds.

- (a) Funds shall be used only for approved eligible costs that are incurred on the Project as set forth in this section, including the Refinance of interim loans used to pay such costs. In addition, the costs must be necessary and must be consistent with the lowest reasonable cost consistent with the Project's scope and area as determined by the Department.
- (b) Eligible costs include the following:
  - (1) property acquisition;
  - (2) refinancing of existing long-term debt, only in connection with a Project involving Substantial Rehabilitation, and only to the extent necessary to reduce debt service to a level consistent with the provision of Affordable Rents in Assisted Units and with the Fiscal Integrity of the Project;
  - (3) land lease payments;
  - (4) construction and Rehabilitation work;
  - (5) off-site improvements, such as sewers, utilities and streets, directly related to, and required by the Rental Housing Development;
  - (6) on-site improvements related to the Rental Housing Development;
  - (7) architectural, appraisal, engineering, legal and other consulting costs and fees, which are directly related to the planning and execution of the Project and which are incurred through third-party contracts;
  - (8) development costs of a residential Unit reserved for an on-site manager, childcare facilities, and after-school care and social service facilities integrally linked to, and addressing the needs of the tenants of the Assisted Units;

- (9) a reasonable developer fee subject to the provisions of Section 7313;
  - (10) Rent-Up Costs;
  - (11) carrying costs during construction, including insurance, construction financing fees and interest, taxes, and any other expenses necessary to hold the property while the Rental Housing Development is under construction;
  - (12) building permits and state and local fees;
  - (13) capitalized operating and replacement reserves. With the approval of the Department, capitalized operating reserves may be used for rent subsidies for Assisted Units in accordance with Section 7305;
  - (14) escrow, title insurance, recording and other related costs;
  - (15) costs for items intended to assure the completion of construction, such as contractor bond premiums;
  - (16) environmental hazard reports, surveys, and investigations;
  - (17) costs of relocation benefits and assistance required by law; and
  - (18) any other costs of Rehabilitation or new construction approved by the Department.
- (c) Except as provided in subsection (b)(8), above, no Program funds shall be used for costs associated exclusively with non-Restricted Units or Commercial Space. A Manager's Unit may be considered to be a Restricted Unit for the purpose of allocating development costs. If only a portion of the Rental Housing Development consists of Restricted Units, the Program loan amount shall not exceed the sum of the following:
- (1) the costs of all items specified in subsection (b), above, associated exclusively with the Restricted Units;
  - (2) a share of the costs of common areas used primarily by residential tenants. This share shall be in direct proportion to the ratio between the gross floor area of the Restricted Units and the gross floor area of all residential Units; and
  - (3) a share of the cost of other items such as roofs that cannot specifically be allocated to Restricted Units, non-Restricted Units, or Commercial Space. This share shall be in direct proportion to the ratio between:

- (A) the gross floor area of the Restricted Units, plus a share of the gross floor area of common areas used primarily by residential tenants in direct proportion to the ratio between the gross floor area of the Restricted Units and the gross floor area of all Units; and
- (B) the total gross floor area of the structure or structures.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.2(e) and (h), and 50675.5, Health and Safety Code.

Section 7305. Operating and Replacement Reserves.

- (a) The Sponsor shall establish an operating reserve for the purpose of defraying potential operating shortfalls arising from unforeseen circumstances, beyond the rent-up period.
  - (1) Withdrawals from the operating reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for a withdrawal from the operating reserve within 30 days from documented receipt of the request, that request will be deemed approved.
  - (2) The operating reserve shall be funded from development funding sources, or, if the Department determines that there is adequate cash flow for this purpose, from either Operating Income during the initial years of Project operations or a combination of development funding sources and Operating Income, as approved by the Department. The amount and schedule of deposits into this reserve shall be in an amount determined sufficient by the Department to equal, by no later than the end of the 6th operating year, at least 4 months of projected Operating Expenses (including an adjustment for inflation and excluding the cost of on-site supportive services coordination), 4 months of required replacement reserve deposits, and 4 months of non-contingent debt service. In setting the required amount, the Department shall base the calculation on figures contained in the Project's most recent approved annual report, submitted pursuant to Section 7325, and consider other factors including, but not limited to the projected level of Project cash flow, the adequacy of the operating budget, Project location, local market characteristics, the number of sites, and Project design.
  - (3) Following the end of the 6th operating year, the minimum required operating reserve balance shall continue to be calculated based on figures contained in the Project's most recent approved annual report, submitted pursuant to Section 7325. Upon occurrence of both of the following events, the Department may reduce the

required minimum balance: (a) operation at a debt services coverage ratio of 1.15 or greater for 5 years; and (b) operation at an Operating Expense coverage ratio of 1.08, where Operating Expense ratio is defined to equal effective gross income, less required replacement reserve deposits and non-contingent debt service, divided by total Operating Expenses, not including the approved cost of supportive services coordination.

- (b) The Sponsor shall establish a replacement reserve for the purpose of defraying the cost of infrequent major repairs and replacement of building components that are too costly to be absorbed by the Project's annual operating budget.
  - (1) Withdrawals from the replacement reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for a withdrawal from the replacement reserve within 30 days of documented receipt of the request, that request will be deemed approved.
  - (2) The replacement reserve shall be funded from Operating Income or a combination of Operating Income and development sources.
    - (A) For the determination of feasibility of new construction or conversion Projects at the application stage, the application shall reflect annual deposits to the replacement reserve account in an amount of 0.6% of estimated construction costs associated with structures in the Project or no less than \$400 per unit per year, adjusted for inflation each year following the year 2000 in accordance with changes in the CPI. Prior to funding, the periodic deposit requirements for new construction and conversion projects will be modified based on the amount shown in a reserve study, or other reliable indicators of the need for replacement reserve funds over time, acceptable to the Department. In the absence of a reserve study or other reliable indicators, the replacement reserve deposit amount shall be 0.6% of the construction contract costs associated with the structures in the Project.
    - (B) For the determination of feasibility of Rehabilitation Projects at the application stage, annual deposits to the replacement reserve account shall be at least \$400 per Unit per year, adjusted for inflation each year following the year 2000 in accordance with changes in the CPI. Prior to funding, the periodic reserve deposits for Rehabilitation Projects shall be modified based on a third-party physical needs assessment, or other reliable indicators of the need for replacement reserve funds over time, acceptable to the Department.

- (3) The Department shall periodically adjust the amount of required deposits to the replacement reserve for a particular Project based on the results of reserve studies or other reliable indicators of the need for replacement reserve funds over time.
- (c) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the reserves described in subsections (a) and (b), above, where the Department determines that such arrangement would not jeopardize the Fiscal Integrity of the Project and the minimum reserve requirements would be maintained. Projects subject to the HUD Section 811 and 202 programs or receiving a permanent loan from CHFA shall not be subject to MHP reserve requirements during the time such projects are regulated by HUD or CHFA.
- (d) Program funds may be used to capitalize reserves for the following purposes:
  - (1) to defray potential operating shortfalls that jeopardize Fiscal Integrity pursuant to subsection (a) above;
  - (2) to defray operating shortfalls projected as the result of:
    - (A) income and expense trending assumptions used to analyze Project cash flow for the first 15 years of Project operations in accordance with TCAC requirements;
    - (B) for operating subsidies for Units reserved for occupancy by households meeting the income restrictions described in Section 7320(b)(1)(C);
  - (3) to transition Projects dependent upon HUD Section 8 or other similar subsidies to operation without such subsidies, in the event they become unavailable; or
- (e) Where Program funds are used for the purpose described in subsection (d)(2), above, the amount of the funds set aside for a particular Project, the duration and amount of the Rent reductions to be provided, and the number and type of households to receive the Rent reductions, shall be established prior to loan award. The amount of the capitalized reserve shall not exceed the amount needed to ensure feasibility for a period of 15 years. The Department shall disburse the funds in a manner to ensure the fiscal integrity of the project for the 15-year period. Sponsors shall use these funds to reduce Rents by a flat amount for each income level.
- (f) In calculating the amount of funds necessary to set aside to capitalize a rent subsidy reserve under subdivision 7305(d)(2)(B) above, the

Department shall assume that the subsidized Units will support no debt service, except for:

- (1) the required annual 0.42% payment on the Program loan; and
  - (2) debt service on any loan made by the California Housing Finance Agency under its special needs housing program, provided that the interest rate on such loan does not exceed 3%.
- (g) Where Program funds are used to capitalize rent subsidy reserves under Subdivision 7305(d)(2)(B) above, the Regulatory Agreement shall provide, upon expiration of the subsidy, for affordable rents for eligible households consistent with the Fiscal Integrity of the Project.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.2(c), 50675.4(c)(1), 50675.5(b)(8), Health and Safety Code.

#### Section 7306. Type and Term of Loan.

- (a) Program funds shall be used for post-construction, permanent financing only, except under an agreement with CHFA to provide construction period financing to eligible projects receiving financing from both CHFA and the Program.
- (b) The initial term of the loan shall be 55 years, commencing on the date of recordation of the Program loan documents.
- (c) Upon request by the Sponsor, the Department may approve a 10-year extension of the loan term if the Department determines both of the following are met:
  - (1) The Sponsor is in compliance with the agreement and agrees to continue to comply during the extended term; and
  - (2) The extension is necessary to continue operations consistent with Program requirements.
- (d) The Department may condition the extension on such terms as it deems necessary to ensure compliance with the requirements of the Program.
- (e) The Program loan shall be secured by the Project real property and improvements, subject only to liens, encumbrances and other matters of record approved by the Department. The Program loan shall have priority over loans from local public agencies and loans provided by the Affordable Housing Program administered by the Federal Home Loan Bank, provided that the Department may subordinate to these loans if they have a principal amount equal to or greater than twice the amount of the Program loan.

- (f) Where the requirements of federal funding for a project, or the requirements of the low-income housing tax credits used in a project, would cause a violation of the requirements of these regulations, the requirements of these regulations may be modified as necessary to ensure program compatibility. Where the requirements of federal funding or tax credits create what are deemed to be minor inconsistencies as determined by the director of the Department, the Department may waive the requirements of these regulations as deemed necessary to avoid an unnecessary administrative burden. Any such modifications or waivers shall be included in the Regulatory Agreement or other documents governing the MHP loan.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1(b), 50675.6, 50675.8, Health and Safety Code.

#### Section 7307. Maximum Loan Amounts.

- (a) The loan amount shall not exceed the total eligible costs required, when considered with other available financing and assistance, in order to:
- (1) enable the acquisition, development and construction or Rehabilitation of the Rental Housing Development;
  - (2) ensure that Rents for Assisted Units comply with Program requirements; and
  - (3) operate in compliance with all other Program requirements.
- (b) The loan amount is further limited to the sum of:
- (1) a base amount per Restricted Unit; plus
  - (2) the amount per Restricted Unit required to reduce Rents from 30% of 60% of Area Median Income to the actual maximum restricted Rent for the Unit, assuming that the Rent reduction will be achieved by substituting Program funds for private amortized debt, and calculated by the Department based on private market multifamily rental loan terms available at the time of issuance of each notice of funding availability.

The initial base amount shall be \$20,000 per Restricted Unit. The Department may periodically adjust this amount as necessary to ensure a sufficient volume of applications that meet the objectives of the Program, as evidenced by high rating scores received under Section 7320(b). In making adjustments to the base amount, the Department shall consider (A) demand evidenced in previous funding rounds; (B) the total amount of

Program funds available for award; (C) trends in Project development costs; and (D) trends in the terms and availability of supplemental development funding sources.

- (c) For loan limit calculations, Dwelling Unit count shall include the number of single-family houses plus the number of Dwelling Units within an apartment building or Residential Hotel regardless of whether bedrooms are rented individually.

For Units receiving rental assistance under renewable rental subsidy contracts, the loan amount will be based on the level of income restriction that will apply following the closing of the Program loan.

- (d) In each notice of funding availability, the Department shall establish a maximum per Project loan amount. This maximum shall be set at a level that ensures sufficient demand for Program funds while meeting the Program's geographic and other distribution goals, taking into account the demand evidenced in previous funding rounds, the availability of other sources of rental subsidy financing and the total amount of Program funds available for award.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1 and 50675.6(e), Health and Safety Code.

#### Section 7308. Interest Rate and Loan Repayments.

- (a) Loans shall bear simple interest of 3% per annum on the unpaid principal balance. Interest shall accrue from the date that funds are disbursed by the Department to or on behalf of the Sponsor.
- (b) For the first 30 years of the loan term, payments in the amount of 0.42% of the outstanding principal loan balance shall be payable to the Department commencing on the last day of the Initial Operating Year and continuing on each anniversary date thereafter. The balance of accrued interest shall be payable out of Operating Income remaining after payment of approved Operating Expenses, debt service on other loans, reserve deposits, and Sponsor Distributions. Commencing on the 30th anniversary of the last day of the Initial Operating Year, interest shall be payable in an amount equal to the lesser of: (1) the full amount of interest accruing on the outstanding principal loan amount; or (2) the amount determined by the Department to be necessary to cover the costs of continued monitoring of the Project for compliance with the requirements of the Program. HUD Section 811 and 202 projects will be subject to the requirements of this subsection.
- (c) Except for the required payment of 0.42% of the outstanding principal loan balance, the Department shall permit the deferral of accrued interest for such periods and subject to such conditions as will enable the Sponsor

to maintain Affordable Rents, maintain the Fiscal Integrity of the Project and pay allowable Distributions pursuant to Section 7313.

- (d) All Program loan payments (including the 0.42% loan payment) shall be applied in the following order: (1) to any expenses incurred by the Department to protect the property or the Department's security interest in the property, or incurred due to the Sponsor's failure to perform any of the Sponsor's covenants and agreements contained in the deed of trust or other loan documents; (2) to the payment of accrued interest; and (3) to the reduction of principal.
- (e) The total outstanding principal and interest, including deferred interest, shall be due and payable in full to the Department at the end of the loan term including any extension granted by the Department. The Department shall, at the end of the loan term, forgive that portion of the Program loan, including principal and deferred interest, applied to the costs of developing childcare facilities provided that such facilities have been operated for childcare purposes for a period of not less than 10 years.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1 and 50675.6(c), Health and Safety Code.

#### Section 7309. Appraisal and Market Study Requirements.

- (a) As a condition of funding, the Department may require an appraisal or market study, or both, to:
  - (1) establish a market value for the land to be purchased or leased as part of the Project for purposes of evaluating the reasonableness of the purchase price or lease terms pursuant to Section 7304;
  - (2) assist with establishing other reasonable development costs pursuant to Section 7304;
  - (3) assess Fiscal Integrity;
  - (4) verify an adequate tenant market.
- (b) Any appraisal required by the Department shall be prepared at the Sponsor's expense by an individual or firm which:
  - (1) has the appropriate license and the knowledge and experience necessary to competently appraise low-income residential rental property;
  - (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible appraisal;

- (3) in reporting the results of the appraisal, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true value and condition of the property; and
  - (4) is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor.
- (c) Any market study required by the Department shall be prepared at the Sponsor's expense by an individual or firm which:
- (1) has the knowledge and experience necessary to conduct a competent market study for low-income residential rental property;
  - (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible market study;
  - (3) in reporting the results of the market study, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property; and
  - (4) is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c) and 50675.7(b)(3), Health and Safety Code.

#### Section 7310. Unit Standards.

- (a) Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units with the same number of bedrooms, and Units shall not differ in size or amenity level on the basis of income-level restrictions. Restricted Units shall not be segregated from non-Restricted Units, and Units shall not be segregated from each other on the basis of income-level restrictions. Within these limits, Sponsors may change the designation of a particular Unit from Assisted to non-Assisted or from one income-restriction to another over time. For Projects involving Rehabilitation or conversion, the Department may permit certain Units to be designated as exclusively market-rate Units where necessary for Fiscal Integrity and where all other Program requirements are satisfied.
- (b) The number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level

described in the Regulatory Agreement for the full loan term.

- (c) The number of Assisted Units shall equal the number of Restricted Units to the extent allowed by the requirements of Article XXXIV.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c), 50675.2(b) and 50675.7, Health and Safety Code.

#### Section 7311. Tenancy Standards.

- (a) Sponsors shall select only Eligible Households as tenants of Assisted Units, and shall annually recertify household income and size to determine continued eligibility. As part of the management plan required by Section 7324, the Sponsor shall develop a tenant selection plan for Assisted Units that shall be subject to the approval of the Department and made available to prospective tenants upon request. Any change to the plan shall be subject to the approval of the Department. The tenant selection plan shall include the following:
  - (1) reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;
  - (2) prohibition of local residency requirements;
  - (3) tenant selection procedures that include the following components:
    - (A) selection of tenants based on order of application, lottery or other reasonable method approved by the Department;
    - (B) notification to tenant applicants of eligibility for residency and, based on turnover history for Units in the Rental Housing Development, the approximate date when a Unit may be available;
    - (C) notification of tenant applicants who are found ineligible to occupy an Assisted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination pursuant to subsection (c), below;
    - (D) maintenance of a waiting list of applicant households eligible to occupy Assisted Units and Units designated for various tenant income levels, which shall be made available to prospective tenants upon request;

- (E) provisions for targeting specific Special Needs Populations in accordance with the Regulatory Agreement and applicable laws; and
  - (F) affirmative fair housing marketing procedures as specified in the Affirmative Fair Housing Marketing Plan Compliance Regulations of the United States Department of Housing and Urban Development , (24) CFR part 200.620 (a)-(d), or similar affirmative fair marketing housing plan as approved by the Department.
- (4) tenant occupancy standards that shall be used by the Sponsor upon both initial occupancy and recertification to determine a tenant's Unit size in accordance with the following standards for minimum number of persons per household:

*Unit Size    Minimum Number of Persons in Household*

SRO	1
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	6
5-BR	8

- (A) A Sponsor may assign tenant households to Units of sizes other than those indicated as appropriate in the table above if the Sponsor reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant's file.
  - (B) If at the time of recertification, a tenant's household size has changed and no longer meets the occupancy standards pursuant to this subsection, the tenant household shall be required to move to the next available appropriately sized Unit.
- (b) The Sponsor shall submit for Department approval the form of the rental or occupancy agreement for Assisted Units prior to its use. The form shall include the following:
- (1) provisions requiring good cause for termination of tenancy. One or more of the following constitutes "good cause":

- (A) failure by the tenant to maintain eligibility under the Program;
  - (B) material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:
    - (i) adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;
    - (ii) substantially interfere with the management, maintenance, or operation of the Rental Housing Development; or
    - (iii) result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;
  - (C) material failure by the tenant to carry out obligations under state or local law;
  - (D) subletting by the tenant of all or any portion of the Assisted Unit;
  - (E) any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided that the Sponsor has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or
  - (F) for Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing development.
- (2) a provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;
  - (3) notice of grievance procedures for hearing complaints of tenants and appeal of management action; and
  - (4) a requirement that the tenant annually recertify household income and size.

- (c) The Sponsor shall adopt an appeal and grievance procedure to resolve grievances filed by tenants, appeals of actions taken by Sponsors with respect to tenants' occupancy in the Rental Housing Development, and prospective tenants' applications for occupancy.
  - (1) The appeal and grievance procedure shall be included in the Sponsor's management plan described in Section 7324 and shall, at a minimum, include the following:
    - (A) a requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;
    - (B) procedures for informal dispute resolution;
    - (C) a right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance;
    - (D) procedures for the conduct of an appeal or grievance hearing and the appointment of the impartial hearing body. The procedures shall include the right to present evidence without regard to formal rules of evidence, the right to be represented by any other person and the right to a written decision from the hearing body. The decision of the hearing body shall be based solely on evidence presented at the hearing; and
    - (E) a requirement that the Sponsor extend any time period imposed pursuant to a formal eviction procedure, including any filing in a court of competent jurisdiction, during the pendency of the hearing.
  - (2) Neither utilization of, nor participation in any of the appeal and grievance procedures shall constitute a waiver of or affect the rights of the tenant, prospective tenant, or Sponsor to a trial de novo or judicial review in any judicial proceeding which may thereafter be brought in the matter.
- (d) If, at the time of tenant recertification, a household's income exceeds the income limit designated for the household's Unit, the household will be subject to TCAC requirements regarding over-income occupancy, except that Units restricted to one of the income levels enumerated in Section 7320(b)(1) shall be subject to the following:
  - (1) If the household's income exceeds the income limit designated for the Unit by more than 10% of State Median Income, but remains below the limit for lower-income households, the Sponsor shall increase the household's Rent to the level applicable to other households with similar incomes, and shall designate the next

available comparable Assisted Unit as a Unit restricted for occupancy by households at the income level formerly applicable to the first Unit until the mix required by the Regulatory Agreement is achieved.

- (2) If the household's income exceeds the limit for lower-income households, the Sponsor shall designate the next available comparable Unit as an Assisted Unit and either:
  - (A) the household's Unit shall be designated as a non-Assisted Unit, if the Rental Housing Development contains such Units; or
  - (B) the household's Rent shall be increased to the market-rate level, and the lease for the Unit shall terminate one year following the recertification date, if the Rental Housing Development does not contain non-Assisted Units and the household fails to provide to the Sponsor additional evidence that establishes that the household's income has declined to a level below the lower-income limit.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.2(b), 50675.7 and 50675.8, Health and Safety Code.

#### Section 7312. Rent Standards.

The Department shall establish Rent limits for Assisted Units in each Project in accordance with the following:

- (a) Rent limits shall be based on Unit type, applicable income limit, and area in which the Project is located, following the calculation procedures used by TCAC and using the income limits recognized by TCAC for purposes of application scoring as well as the income limits utilized by the Program for this purpose pursuant to Section 7320(b)(1). The maximum Rent limit shall be 30% of 60% of Area Median Income for the appropriate Unit size.
- (b) Rents will be further restricted in accordance with Rent and income limits submitted by the Sponsor in its application for the Program loan, approved by the Department, and set forth in the Regulatory Agreement. Rents shall not exceed 30% of the applicable income eligibility level.
- (c) Rents in Assisted Units may be adjusted no more often than annually. The amount and method of adjustment for Assisted Units shall be in accordance with the regulations and procedures used by TCAC provided that the annual increase rate shall not exceed 150% of the annual change rate for the CPI. For Units receiving HUD Section 8 or other similar rental assistance, the rules of the rental assistance program pertaining to Rent increases will prevail for as long as the rental assistance remains in

place. Changes in the tenant contribution amounts may occur more often than annually as required by the rental assistance program and without regard to the 150% of CPI ceiling.

- (d) Where a Project is receiving renewable Project-based rental assistance:
  - (1) the Sponsor shall in good faith apply for and accept all renewals available;
  - (2) the Sponsor shall fund a transition reserve to be used in the event the rental assistance contract is terminated. The transition reserve shall be in an amount sufficient to prevent, for two years, Rent increases for Units that formerly received rental assistance and were restricted to households with incomes not exceeding a percentage of State Median Income. The transition reserve may be capitalized or funded from annual project cash flow in amounts to be approved by the Department. Use of funds in the reserve shall be subject to the review and approval of the Department; and
  - (3) if the Project-based rental assistance is terminated, Rents for Units previously covered by this assistance may be increased above the levels allowed pursuant to subsection (c), above, but only to the minimum extent required for Fiscal Integrity, as determined by the Department. In addition, Rents for such Units restricted to households with incomes not exceeding a percentage of State Median Income shall not in any event be increased to an amount in excess of 30% of 50% of Area Median Income, adjusted by number of bedrooms in accordance with TCAC requirements.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.2(b) and (c) and 50675.8, Health and Safety Code.

#### Section 7313. Limits on Distributions and Net Developer Fees.

- (a) Annual Distributions of cash flow from the Project shall be limited to an amount not to exceed the greater of:
  - (1) The sum of:
    - (A) \$480 for each Restricted Unit in the Project, adjusted for inflation for each year following the year 2000 in accordance with changes in the CPI; and
    - (B) 30% of the amount of cash flow remaining after payment of all debt service, Operating Expenses, required reserves, and the Distributions permitted by subparagraph (A), above, not to exceed 125% of subparagraph (A), above; or

- (2) The amount applied to the balance of any deferred developer fee, not to exceed the difference between:
  - (A) maximum net fees payable to the Sponsor from development funding sources, as computed pursuant to subsection (f), below; and
  - (B) net fees actually paid from development funding sources.
- (b) Cash flow remaining after payment of Distributions shall be applied toward repayment of the Program loan or, with the approval of the Department, used to reduce Rents in Assisted Units or for other purposes related to the Project. If the terms of other public agencies' financing also require payments from remaining cash flow, the Department may agree to share the remaining cash flow with the public agencies in amounts proportional to the agencies' respective loan amounts.
- (c) A Sponsor may not accumulate Distributions from year to year. A Sponsor may deposit all or a portion of permitted Distributions into a Project account for Distribution in subsequent years. These future Distributions shall not reduce the otherwise permitted Distribution in those subsequent years.
- (d) Distributions shall be permitted only after the Sponsor submits a complete annual report and operating budget, if required by the Department, and the Department determines that the report and budget demonstrate compliance with all Program requirements for the applicable year. Circumstances under which no Distributions shall be made include:
  - (1) when written notice of default has been issued by any entity with an equitable or beneficial interest in the Rental Housing Development;
  - (2) when the Department determines that the Sponsor has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation of the Rental Housing Development;
  - (3) if all currently required debt service, including mandatory payments on the Program loan, and Operating Expenses have not been paid;
  - (4) if the replacement reserve account or any other reserve accounts are not fully funded pursuant to Section 7326 and the Regulatory Agreement.
- (e) Distributions attributed to income from Commercial Space and non-Restricted Units shall not be subject to limits pursuant to this section.

- (f) Net fees paid from development funding sources to the Sponsor, or any affiliates of the Sponsor, in the form of fees or payments of any kind shall not exceed the lesser of \$1,200,000 or the amounts calculated in accordance with the schedule below, which will be adjusted in thousand dollar increments in accordance with changes in the CPI, and when, following the year 2000, the CPI has indicated the next full thousand dollar increment has been reached. Deferred developer fees may be paid from cash flow pursuant to the definition of “Distributions” and subsection (a), above.
  - (1) For new construction and Substantial Rehabilitation Projects, excluding those funded under the HUD Section 811 and 202 programs:
    - (A) For the first 30 Units, \$15,000 per Unit.
    - (B) For each Unit in excess of 30, \$7,500 per Unit.
  - (2) For other Projects involving acquisition and Rehabilitation where the contract amount for the Rehabilitation work, excluding contractor profit and overhead, equals or exceeds \$7,500 per Dwelling Unit, and excluding those funded under the HUD Section 811 and 202 programs:
    - (A) For the first 30 Units, \$9,000 per Unit.
    - (B) For each Unit in excess of 30, \$4,500 per Unit.
  - (3) For Projects funded under the HUD Section 811 and 202 programs, \$5,000 per Unit.
  - (4) For all other Projects, \$2,000 per Unit.
  - (5) Net fees shall be calculated by subtracting contributions of funds or real property, as approved by the Department, made toward Project development costs by the Sponsor or an affiliate from the total of all fees paid to or on behalf of the Sponsor or affiliate.
- (g) Developer fees do not include reasonable fees approved by the department for construction contracting, architectural services, engineering and other services directly related to the construction of the project, or for property management fees for the purpose of initial renting of the project.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c), 50675.5 and 50675.8(a)(5), Health and Safety Code.

#### Section 7314. Limits on Development Costs

- (a) Except where required to secure local government approvals essential to completion of the Project, or where necessary to receive tax credits for historic preservation, costs associated with the following new construction items are ineligible for funding with Program loan proceeds, and cannot be paid for from syndication proceeds or loans supported by Rents from Assisted Units:
  - (1) building and roof shapes, ornamentation and exterior finish schemes whose costs are in excess of the typical costs of these features in modestly designed rental housing;
  - (2) fireplaces, tennis courts, and similar amenities not typically found in modestly designed rental housing; and
  - (3) custom-made windows, ceramic tile floors and counters, hardwood floors, and similar features using materials not typically found in modestly designed rental housing, except where such materials have lower lifecycle costs due to lower operating, maintenance and replacement costs.
- (b) Builder overhead, profit and general requirements shall be limited in accordance with California Code of Regulations, Title 4, Section 10327.
- (c) Property acquisition prices shall not exceed appraised value, except where the increment above appraised value is fully covered by junior public agency financing that carries no mandatory debt service.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.5 and 50675.7(b), Health and Safety Code.

#### Section 7315. Relocation Requirements.

- (a) The Sponsor of a Project resulting in displacement of residential tenants shall be solely responsible for providing the assistance and benefits set forth in this section and in applicable state and federal law, and shall agree to indemnify and hold harmless the Department from any liabilities or claims for relocation-related costs.
- (b) All tenants of a property who are displaced as a direct result of the development of a Project shall be entitled to relocation benefits and assistance as provided in Title 1, Division 7, Chapter 16 of the Government Code, commencing at Section 7260, and Subchapter 1 of Chapter 6 of Title 25 of the California Code of Regulations, commencing at Section 6000. Displaced tenants who are not replaced with Eligible

Households under this Program shall be provided relocation benefits and assistance from funds other than Program funds.

- (c) The Sponsor shall prepare a relocation plan in conformance with the provisions of California Code of Regulations, Title 25, Section 6038. The relocation plan shall be subject to the review and approval by the Department prior to the disbursement of Program funds.
- (d) All Eligible Households who are temporarily displaced as a direct result of the development of the Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy Assisted Units meeting the tenant occupancy standards set forth in Section 7311.
- (e) All in-Eligible Households who are temporarily displaced as a direct result of the development of the Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy any available non-Assisted Units for which they qualify.
- (f) Notwithstanding the preceding subsections, tenants who are notified in writing prior to their occupancy of an existing Unit that the Unit may be demolished as a result of funding provided under the Program shall not be eligible for relocation benefits and assistance under this section. The form of any notices used for this purpose shall be subject to Department approval.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Government Code, Title 1, Division 7, Chapter 16 (commencing with Section 7260).

#### Section 7316. Construction Requirements.

- (a) The Department may review Project plans and specifications to ensure the following objectives:
  - (1) Maintenance, repair, and replacement costs shall be minimized during the useful life of the Rental Housing Development through use of durable, low maintenance materials and equipment and design features that minimize wear and tear.
  - (2) Operating costs shall be minimized during the useful life of the Rental Housing Development.
  - (3) Tenant security shall be enhanced through features such as those designed to prevent or discourage unauthorized access and to allow for ready monitoring of public areas.
  - (4) Unit sizes, amenities, and general design features shall not exceed the standard for new developments rented at or below the market

rent in the area of the Project, and Unit density shall not be substantially less than the average for new developments with such Units.

- (b) The Sponsor shall ensure that the construction work for the Project is performed in a competent, professional manner at the lowest reasonable cost consistent with the Project's scope, design and locality and not in excess of the total funds available.
- (c) The Sponsor shall enter into a written contract for the construction or Rehabilitation work with a contractor having the appropriate state license. The contract shall be subject to the prior approval of the Department to determine compliance with Program requirements.
- (d) The construction contract shall be a completely integrated agreement containing all the understandings, covenants, conditions and representations between the parties and shall specify a total contract price consistent with the Project budget approved by the Department.
- (e) The Sponsor shall ensure that the construction contract requires compliance with state prevailing wage law (Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720). The construction contract shall require the contractor to maintain labor records as required by law, and to make these records available to any enforcement agency upon request. Prior to the close of the Program loan, the Sponsor shall provide to the Department a certification that prevailing wages have been paid or will be paid, and that the records shall be available consistent with the requirements of this subsection.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.5 and 50675.7, Health and Safety Code.

### Article 3. Application Procedures

#### Section 7317. Application Process.

- (a) The Department shall periodically issue a Notice of Funding Availability (NOFA) that specifies, among other things, the amount of funds available, application requirements, the allocation of rating points, minimum eligibility threshold point scores, the deadline for submittal of applications, the schedule for rating and ranking applications and awarding funds, and the general terms and conditions of funding commitments. A NOFA may declare as ineligible those Project applications for which the Department has issued, or concurrently will issue, a special NOFA pursuant to subsection (c)(4), below.
- (b) Applications selected for funding shall be approved at loan amounts, terms, and conditions specified by the Department. For each Project

selected for funding, the Department shall issue an award letter and a conditional loan commitment.

- (c) In order to implement goals and purposes of the Program, the Department may adopt measures to direct funding awards to designated Project types including, but not limited to, Rural Area Projects, Projects located in areas needing additional funding to achieve a reasonable geographic distribution of Program funds, Projects preserving continued affordability, and Projects with specified funding characteristics, including, but not limited to, Projects receiving an award of tax credits from TCAC. These measures may include, but are not limited to:
  - (1) Issuing a special NOFA for designated Project types.
  - (2) Awarding bonus points within a particular NOFA to designated Project types.
  - (3) Reserving a portion of funds in the NOFA for designated Project types.
  - (4) Notwithstanding anything in these regulations to the contrary, a special NOFA issued pursuant to this subsection may establish an over-the-counter application process, meaning the Department continuously accepts and rates applications according to minimum threshold criteria published in a NOFA for the process, and makes loans to Projects that meet or exceed these criteria until the funding available for the process is exhausted. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with Section 7320(a), and shall establish minimum funding threshold criteria based on the rating criteria set forth in Section 7320(b).

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c), 50675.6, 50675.7, Health and Safety Code.

#### Section 7318. Application Requirements.

- (a) Application shall be made on a form made available by the Department requesting the information required by Multifamily Housing Program Regulations.
- (b) An application shall be deemed complete when the Department is able to review the application and assess the proposed Project's feasibility pursuant to Section 7319 and to determine from the information provided whether the Project is eligible for rating and ranking pursuant to Section 7320.

- (c) Submission of an application by the applicant and a co-applicant must be authorized by resolutions of the governing boards of both the applicant and co-applicant, unless the applicants are individuals.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.6 and 50675.7, Health and Safety Code.

#### Section 7319. Project Feasibility.

The Department shall analyze Project feasibility utilizing at a minimum the following assumptions and criteria:

- (a) Vacancy rates for non-Special Needs Populations' residential Units shall be assumed to be 5%, unless compelling market evidence supports a lower figure. Vacancy rates for Special Needs Populations' residential Units shall be assumed to be 10% unless compelling market evidence supports a different figure.
- (b) Vacancy rates for Commercial Space shall be assumed to be 50%. The Department may permit an exception to this assumption if the Sponsor documents clear and compelling market evidence that supports the assumption of a lower vacancy rate. Clear and compelling market evidence may include a third-party market study establishing that the proposed commercial rents are significantly below market, or that the average vacancy rate in competitive commercial properties in the market area is less than 10%.
- (c) Total Operating Expenses (not including property taxes) shall not be less than those specifically listed in California Code of Regulations, Title 4, Section 10327 as minimum Operating Expenses. The Department may analyze Project feasibility using higher assumed Operating Expenses where warranted by the experience of comparable properties and particular building characteristics, such as the nature of the tenant population or the level of Rehabilitation. Prior to loan closing, the Department may approve total Operating Expenses that are less than those specified in Section 10327, supra, only if the Project has an extraordinary design feature, such as its own electrical generation system, which results in a quantifiable operating cost savings as documented by a qualified third party.
- (d) The first year Debt Service Coverage Ratio shall not be less than 1.1:1. In applying this requirement, the annual Program loan payment of 0.42% will be considered debt service. This requirement shall not apply to Projects funded under the HUD Section 811 and 202 programs.
- (e) All mandatory debt service must be supported by Project cash flow. No balloon payments are allowed on senior debt.

- (f) Income and expenses shall be extrapolated for 15 years in accordance with California Code of Regulations, Title 4, Section 10327. If income includes rental assistance or operating subsidy payments under a renewable contract, it will be assumed that this contract will be renewed.
- (g) All Operating Expenses, including property management fees, shall be within the normal market range, as periodically determined by the Department in surveys.
- (h) Deposits to operating and replacement reserves shall be in accordance with the requirements of Section 7305.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Section 50675.7, Health and Safety Code.

Section 7320. Project Selection.

- (a) Projects shall not be eligible for an award of funds unless the application demonstrates that all of the following conditions exist:
  - (1) The applicant is an eligible Sponsor pursuant to Section 7303;
  - (2) The Project involves an eligible Project pursuant to Section 7302;
  - (3) All proposed uses of Program funds are eligible pursuant to Section 7304;
  - (4) The application is complete pursuant to Section 7318;
  - (5) The Project will maintain Fiscal Integrity consistent with proposed Rents in the Assisted Units and is feasible pursuant to Section 7319;
  - (6) The Project site is free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove and that cannot be mitigated;
  - (7) The Project site is reasonably accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the Project tenants; and
  - (8) In Projects targeting Special Needs Populations, the Project will provide services suitable to the needs of the tenants, and the application demonstrates a specific, feasible plan for delivery and funding of those services including identification of service partners and funding sources.

- (b) Applications shall be reviewed by the Department to determine compliance with subsection (a), above, and shall be rated and ranked in accordance with this subsection (b). Applications shall be ranked in the order of their point scores. The Department may establish a preliminary point score and ranking for applications prior to determining their compliance with subsection (a), above. If an application will not be within a fundable range as indicated by the preliminary ranking, the Department is not required to determine the application's compliance with subsection (a), above. Additional or alternative scoring may be implemented in particular NOFA's for designated Project types as described above in Section 7317(c).

The following criteria shall be used to rate applications:

- (1) **The extent to which the Project serves households at the lowest income levels – 35 points maximum.**

Applications will be scored based on the percentage of Restricted Units limited to various percentages of the State Median Income, adjusted by household size, and in accordance with the following schedules:

High Income Areas

For purposes of this subchapter, "high income areas" means counties with Area Median Incomes that exceed 110% of the State Median Income.

- (A) 0.75 points will be awarded for each percent of Restricted Units that are Restricted Units for households with incomes less than or equal to 40% of State Median Income.
- (B) 1 point will be awarded for each percent of Restricted Units that are Restricted Units for households with incomes less than or equal to 35% of State Median Income.
- (C) 1.5 points will be awarded for each percent of Restricted Units that are Restricted Units for households with incomes not exceeding 20% of State Median Income (adjusted by the Department to avoid exclusion of working CalWORKs recipients and individuals receiving SSI) for the first 10% of total Restricted Units; then 1 point for each subsequent percent of total Restricted Units.

Point scores will be rounded to the nearest one hundredth point in this category.

### Other Areas

- (D) .75 points will be awarded for each percent of Restricted Units that are Restricted Units for households with incomes less than or equal to 35% of State Median Income.
- (E) 1 point will be awarded for each percent of Restricted Units that are Restricted Units for households with incomes less than or equal to 30% of State Median Income.
- (F) 1.5 points will be awarded for each percent of Restricted Units that are Restricted Units for households with incomes not exceeding 20% of State Median Income (adjusted by the Department to avoid exclusion of working CalWORKs recipients and individuals receiving SSI) for the first 10% of total Restricted Units; then 1 point for each subsequent percent of total Restricted Units.

In Projects that rely on renewable Project-based rental assistance contracts to maintain Fiscal Integrity consistent with the targeted income limits (and associated tenant Rents), scores will be based on the income limits and Rents applicable under the rent subsidy contract.

Point scores will be rounded to the nearest one hundredth point in this category.

(2) **The extent to which the Project addresses the most serious identified local housing needs – 15 points maximum.**

- (A) 5 points will be awarded based on the receipt of:
  - 1. a letter from the local housing agency, or city, or county in which the proposed Project will be located, stating that the proposed Project will address a serious local housing need as identified in a specific local policy document; or
  - 2. for Projects with a minimum of 70% of Project Units reserved for Special Needs Populations, a letter from a local government entity responsible for delivery of Special Needs Populations' services, stating that the proposed Project will address a serious local housing need related to Special Needs Populations served by the Project.
- (B) Projects will receive 10 additional points if:
  - 1. at least 70% of the total Dwelling Units are reserved for Special Needs Populations; or

2. at least 70% of the total Dwelling Units have 2 or more bedrooms, and they are located in one of the following counties: San Diego, Orange, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Monterey, Santa Cruz, San Mateo, Santa Clara, San Francisco, Alameda, Contra Costa, Napa, Solano, Marin or Sonoma.

(C) For Projects not meeting the requirements of subsection (b)(2)(B), above, up to 10 points will be awarded on the basis of vacancy rate comparisons with competitive developments as described in subparagraph (3), below. (For purposes of the following vacancy rate comparison, Units reserved for Special Needs Populations in the proposed Project and competitive Projects shall not be considered.)

1. Competitive developments are multifamily rental developments with Units similar to those in the Project, which are not severely dilapidated, are not being purposely held vacant or partially vacant, and are not affected by some other unique situation that is artificially depressing occupancy levels. If the proposed Project is for the elderly, competitive Projects must be limited to this population;
2. Units similar to those in the Project are defined as Units with the same number of bedrooms and bathrooms. Where the proposed Project contains 3 or 4 bedroom Units and where 3 or 4 bedroom multifamily rental developments do not exist in the market area of the proposed Project, competitive developments will be those multifamily rental developments containing the largest Units in the market area of the proposed Project while meeting the requirements of subparagraph (1.), above;
3. Points will be awarded on the basis of either the weighted average vacancy rate, as documented by the Sponsor, of 5 or more competitive developments, nearest the proposed Project, or the vacancy rate as determined by a market study, performed by a qualified third party in accordance with TCAC market study requirements as follows:
  - (i) 10 points will be awarded if the vacancy rate is lower than 3%.
  - (ii) 5 points will be awarded if the vacancy rate is between 3% and 5%.

(3) **The development and ownership experience of the Project Sponsor -- 20 points maximum.**

- (A) Applications will be scored based on the number of subsidized Rental Housing Developments (including tax credit Projects) that the Sponsor has completed over the last 5 years and whether they have identified performance problems.
- (B) A Sponsor may include the experience of its affiliated entities or its principals (e.g., employees responsible for managing development activities), but not the experience of non-management board members. A Sponsor may include the experience of a partner in order to gain experience points; however, the experienced partner must have a controlling interest in the partnership and a substantial and continued role in the Project's ongoing operations, as evidenced in partnership documents. In such cases, points will be awarded based only on the experience of the more experienced partner. Any dissolution of the partnership or withdrawal of the more experienced partner will require prior written approval by the Department.
- (C) To be counted towards experience pursuant to subsection (b)(3), above, completed Projects cited for experience points must contain 10 or more Units, except if the proposed Project contains less than 15 Units and at least 70% of the total Units in the proposed Project are reserved for Special Needs Populations, completed Projects submitted for experience points must contain at least 5 Units.
- (D) 4 points will be awarded for each Project completed in the 5 years preceding the application due date, up to a maximum of 20 points.
- (E) Where at least 70% of the Units in the proposed Project are reserved for Special Needs Populations, the Sponsor may elect to have its application scored based on the lesser of:
  - 1. The number of subsidized Rental Housing Developments that the Sponsor's development consultant or contracted developer has completed in the last five years; or
  - 2. The number of subsidized Rental Housing Developments that the Sponsor, or affiliates or principals of the Sponsor either own or operate under a long-term lease or other arrangement that involves all responsibilities commensurate with ownership.

To qualify for scoring under this alternative, the Sponsor must contract with the developer or development consultant for comprehensive development services, including financial packaging, selection of other consultants, selection of the construction contractor and property management agent, oversight of architectural design, construction management, and other major aspects of the development process.

Applications scored under this alternative shall be awarded 4 points per Rental Housing Development, up to a maximum of 20 points.

(F) 5 points will be deducted for each occurrence or event in the following categories, with a maximum deduction of 10 points per category and a maximum total deduction of 50 points:

1. removal or withdrawal under threat of removal as general partner;
2. failure to submit, when due, compliance documentation required under the Department Program;
3. use of reserve funds for Department-assisted Projects in a manner contrary to Program requirements, or failure to deposit reserve funds as required by the Department;
4. failure to provide promised supportive services to a Special Needs Population or other tenants of a publicly funded Project;
5. other significant violations of the requirements of Department programs or of the programs of other public agencies, such as the failure to adequately maintain a Project or the books and records thereof.

Events occurring in connection with Projects under the control of the Sponsor shall be used as the basis for point deductions. Such events shall have had a detrimental effect on the Project or the Department's ability to monitor the Project, as determined by the Department. Events shall not result in the deduction of points if they have been fully resolved as determined by, or to the satisfaction of, the Department as of the application due date.

(4) **The percentage of Units for families or Special Needs Populations and "at-risk" Rental Housing Developments – 35 points maximum.**

Applications will be scored based on the percentage of Project Units that will have 2 or more bedrooms, or that are reserved for

Special Needs Populations. Projects must have at least 5 Units reserved for Special Needs Populations to receive points for Special Needs Populations' Units. To receive points for Special Needs Populations' Units, a complete and detailed supportive services plan acceptable to the Department, describing services appropriate to the needs of the targeted population, a line item budget, and documentation identifying proposed funding sources must accompany the application, along with detailed documentation acceptable to the Department describing the experience and capacity of the services provider.

- (A) .2 points will be awarded for each percent of total Project Units that have 2 bedrooms.
- (B) .7 points will be awarded for each percent of total Project Units that have 3 or more bedrooms.
- (C) 1 point will be awarded for each percent of total Project Units that are reserved for a Special Needs Population or Populations.
- (D) Projects approved by the Department as "at-risk", as defined by TCAC Regulations, will receive 35 points in this category.

Point scores will be rounded to the nearest one hundredth point in this category.

(5) **Leverage of other funds, in those jurisdictions where they are available – 20 points maximum.**

Applications will be scored based on the leverage of other funds, meaning the amount of non-Program funds for permanent funding of the development costs attributable to the Restricted Units, as a percentage of the requested amount of Program funds. Deferred developer fees will not be counted as leveraged funds. Land donations will be counted as leveraged funds where the value is established with a current appraisal. One-half point will be awarded for each full 5-percentage point increment above 150%. Rural Area Projects will be awarded one-half point for each full 5-percentage point increment above 100%. For example, a non-Rural Area Project where other funds are equal to 150% of requested Program funds will receive zero (0) points, a Project where other funds equal 200% will receive 5 points, a Project where other funds equal 300% will receive 15 points, and a Project where non-Program funds equal 400% of requested Program funds will receive the maximum 20 points.

(6) **Project Readiness – 15 points maximum.**

- (A) 2.5 points will be awarded to Projects for each of the following circumstances as documented in the application. Any application demonstrating that a particular category is not applicable to Project readiness for the subject Project shall be awarded points in that category:
1. obtaining enforceable commitments for all construction financing, not including tax-exempt bonds, 4% tax credits, and funding to be provided by another Department program. The other Department funds must be confirmed as available concurrent with Program funding;
  2. completion of all necessary environmental clearances (California Environmental Quality Act and National Environmental Policy Act) and of a Phase I Environmental Site Assessment;
  3. obtaining all necessary and discretionary public land use approvals except building permits and other ministerial approvals;
  4. either:
    - (a) the Sponsor has fee title ownership to the site or a long-term leasehold securing the site meeting the criteria for Program site control; or
    - (b) the Sponsor can demonstrate that the working drawings are at least 50% complete, as certified by the Project architect;
  5. obtaining local design review approval to the extent such approval is required;
  6. obtaining commitments for all deferred-payment financing, grants and subsidies, in accordance with TCAC requirements and with the same exceptions as allowed by TCAC.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.4, 50675.5, 50675.6 and 50675.7, Health and Safety Code.

Article 4. Program Operations

Section 7321. Legal Documents.

- (a) Upon the award of Program funds to a Project, the Department shall enter into one or more agreements with the Sponsor, which may be in the form of a conditional commitment letter issued by the Department and accepted

by the Sponsor, which shall commit monies from the Fund in an amount sufficient to fund the approved loan amount. The agreement or agreements shall contain the following:

- (1) a description of the approved Project and the permitted uses of Program funds;
- (2) the amount and terms of the loan;
- (3) the regulatory restrictions to be applied to the Project through the Regulatory Agreement;
- (4) provisions governing the construction work and, as applicable, the acquisition of the Project site, and the disbursement of loan proceeds;
- (5) special conditions imposed as part of Department approval of the Project;
- (6) requirements for the execution and the recordation of the agreements and documents required under the Program;
- (7) terms and conditions required by federal or state law;
- (8) requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of loan proceeds;
- (9) the approved schedule of the Project, including land acquisition if any, commencement and completion of construction or Rehabilitation work, and occupancy by Eligible Households;
- (10) the approved Project development budget and sources and uses of funds and financing;
- (11) requirements for reporting to the Department;
- (12) terms and conditions for the inspection and monitoring of the Project in order to verify compliance with the requirements of the Program;
- (13) provisions regarding tenant relocation;
- (14) provisions relating to the erection and placement on or in the vicinity of the Project site a sign indicating that the Department has provided financing for the Project. The Department may also arrange for publicity of the Program loan in its sole discretion; and
- (15) other provisions necessary to ensure compliance with the requirements of the Program.

- (b) The Department shall enter into a Regulatory Agreement with the Sponsor for not less than the original term of the loan that shall be recorded against the Project property title prior to the disbursement of funds. The Regulatory Agreement shall include, but not be limited to, the following:
- (1) the number, type and income level of Assisted Units pursuant to Section 7310;
  - (2) standards for tenant selection pursuant to Section 7311;
  - (3) provisions regulating the terms of the rental agreement pursuant to Section 7311;
  - (4) provisions related to an annual operating budget approved by the Department pursuant to Section 7326;
  - (5) provisions related to a management plan pursuant to Section 7324;
  - (6) provisions related to a Rent schedule, including initial Rent levels for Assisted Units and non-Assisted Units pursuant to subsections (a) and (b) of Section 7312;
  - (7) conditions and procedures for permitting Rent increases pursuant to subsection (c) of Section 7312;
  - (8) provisions for limitations on Distributions pursuant to Section 7313;
  - (9) provisions relating to annual reports, inspections and independent audits pursuant to Section 7325;
  - (10) provisions regarding the deposit and withdrawal of funds to and from reserve accounts;
  - (11) assurances that the Rental Housing Development will be maintained in a safe and sanitary condition in compliance with state and local housing codes and the management plan, pursuant to Section 7324;
  - (12) description of the conditions constituting breach of the Regulatory Agreement and remedies available to the parties thereto;
  - (13) provisions governing use and operation of non-Assisted Units and common areas to the extent necessary to ensure compliance with Program requirements;
  - (14) provisions relating to enforcement of Program requirements by tenants;

- (15) special conditions of loan approval imposed by the Department;
  - (16) provisions specifying that the Regulatory Agreement shall be binding on all assigns and successors in interest of the Sponsor and that all sales, transfers, and encumbrances shall be subject to Section 7322;
  - (17) for Projects serving Special Needs Populations and/or providing services to the general tenant population, provisions regarding the implementation and maintenance of services and facilities for the targeted Special Needs Population group and/or general tenant population; and
  - (18) other provisions necessary to assure compliance with the requirements of the Program.
- (c) All loans shall be evidenced by a promissory note payable to the Department in the principal amount of the loan and stating the terms of the loan consistent with the requirements of the Program. The note shall be secured by a deed of trust on the Project property naming the Department as beneficiary or by other security acceptable to the Department; this deed of trust or other security shall be recorded junior only to such liens, encumbrances and other matters of record approved by the Department and shall secure the Department's financial interest in the Project and the performance of Sponsor's Program obligations.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1, 50675.6 and 50675.8, Health and Safety Code.

Section 7322. Sales, Transfers, and Encumbrances.

- (a) A Sponsor shall not sell, assign, transfer, or convey the Rental Housing Development, or any interest therein or portion thereof, without the express prior written approval of the Department. A sale, transfer or conveyance shall be approved only if all of the following requirements are met:
- (1) the existing Sponsor is in compliance with the Regulatory Agreement, or the sale, transfer or conveyance will result in the cure of any existing violations;
  - (2) the successor-in-interest to the Sponsor agrees to assume all obligations of the existing Sponsor pursuant to the Regulatory Agreement and the Program;
  - (3) the successor-in-interest is an eligible Sponsor and demonstrates to the Department's satisfaction that it can successfully own and

operate the Rental Housing Development and comply with all Program requirements; and

- (4) no terms of the sale, transfer, or conveyance jeopardize either the Department's security or the successor's ability to comply with all Program requirements.
- (b) If the Sponsor or its successor-in-interest is a partnership, the Sponsor shall not discharge or replace any general partner or amend, modify or add to its partnership agreement, or cause or permit the general partner to amend, modify or add to the organizational documents of the general partner, without the prior written approval of the Department. The Sponsor may transfer limited partnership interests without the prior written approval of the Department.
- (c) The Department shall grant its approval of a sale, assignment, transfer, or conveyance subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Project. Such conditions may include:
  - (1) the deposit of sales proceeds, or a portion thereof, to maintain required reserves, or to offset negative cash flow;
  - (2) the recapture of syndication proceeds or other funds in accordance with special conditions included in any agreement executed by the Sponsor; or
  - (3) such conditions as may be necessary to ensure compliance with the Program requirements.
- (d) The Sponsor shall not encumber, pledge, or hypothecate the Rental Housing Development, or any interest therein or portion thereof, or allow any lien, charge, or assessment against the Rental Housing Development without the prior written approval of the Department. The Department may permit refinancing of existing liens or additional financing secured by the Rental Housing Development to the extent necessary to maintain or improve the Fiscal Integrity of the Project, to maintain Affordable Rents, or to decrease Rents.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1 and 50675.8, Health and Safety Code.

#### Section 7323. Defaults and Loan Cancellations.

- (a) In the event of a breach or violation by the Sponsor of any of the provisions of the Regulatory Agreement, the promissory note, or the deed of trust, or any other agreement pertaining to the Project, the Department may give written notice to the Sponsor to cure the breach or violation

within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default under the relevant document(s) and may seek legal remedies for the default including the following:

- (1) The Department may accelerate all amounts, including outstanding principal and interest, due under the loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amounts in full, the Department may proceed with a foreclosure in accordance with the provisions of the deed of trust and state law regarding foreclosures.
  - (2) The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to operate the Rental Housing Development in accordance with Program requirements.
  - (3) The Department may seek such other remedies as may be available under the relevant agreement or any law.
- (b) If the breach or violation involves charging tenants Rent or other charges in excess of those permitted under the Regulatory Agreement, the Department may demand the return of such excess Rents or other charges to the respective households. In any action to enforce the provisions of the Regulatory Agreement, the Department may seek, as an additional remedy, the repayment of such overcharges.
- (c) The Department may cancel Loan commitments under any of the following conditions:
- (1) the objectives and requirements of the Program cannot be met;
  - (2) implementation of the Project cannot proceed in a timely fashion in accordance with the approved plans and schedules;
  - (3) special conditions have not been fulfilled within required time periods; or
  - (4) there has been a material change, not approved by the Department, in the principals or management of the Sponsor or Project.

The Department, in writing and upon demonstration by the Sponsor of good cause, may extend the date for compliance with any of the conditions in this subsection.

- (d) Upon receipt of a notice from the Department of intent to cancel the loan, the Sponsor shall have the right to appeal to the Director.

- (e) The Department may use amounts in the Fund to cure or avoid a Sponsor's default on the terms of any loan or other obligation that jeopardizes the Fiscal Integrity of a Project or the Department's security in the Project. Such defaults may include defaults or impending defaults in payments on mortgages, failures to pay taxes, or failures to maintain insurance or required reserves. The payment or advance of funds by the Department pursuant to this subsection shall be solely within the discretion of the Department and no Sponsor shall be entitled to or have any right to payment of these funds. All funds advanced pursuant to this subsection shall be part of the Program loan and, upon demand, due and payable to the Department. Where it becomes necessary to use the Fund to assist a Project to avoid threatened defaults or foreclosures, the Department shall take those actions necessary, including, but not limited to, foreclosure or forced sale of the Project property, to prevent further, similar occurrences and ensure compliance with the terms of the applicable agreements.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1, 50675.8 and 50675.10, Health and Safety Code.

#### Section 7324. Management and Maintenance.

- (a) The Sponsor shall be responsible for all management functions of the Rental Housing Development including selection of the tenants, annual recertification of household income and size, evictions, and collection of Rent.
- (b) The Sponsor is responsible for all repair and maintenance functions of the Rental Housing Development, including ordinary maintenance and replacement of capital items. The Sponsor shall ensure maintenance of residential Units, Commercial Space and common areas in accordance with local health, building, and housing codes, and the management plan.
- (c) The Sponsor shall ensure that the Rental Housing Development is managed by an entity approved by the Department that is actively in the business of managing low-income housing. Any management contract entered into for this purpose shall be subject to Department approval and contain a provision allowing the Sponsor to terminate the contract upon 30-days' notice. The Sponsor shall terminate said contract as directed by the Department upon determination that management does not comply with Program requirements.
- (d) The Sponsor shall develop a management plan subject to Department approval prior to loan closing. The plan shall be consistent with Program requirements and shall include the following:
  - (1) the role and responsibility of the Sponsor and its delegation of authority, if any, to the managing agent;

- (2) personnel policy and staffing arrangements;
- (3) plans and procedures for publicizing and achieving early and continued occupancy;
- (4) procedures for determining tenant eligibility and for certifying and annually recertifying household income and size;
- (5) plans for carrying out an effective maintenance and repair program;
- (6) Rent collection policies and procedures;
- (7) a program for maintaining adequate accounting records and handling necessary forms and vouchers;
- (8) plans for enhancing tenant-management relations;
- (9) the management agreement, if any;
- (10) provisions for periodic update of the management plan;
- (11) appeal and grievance procedures;
- (12) plans for collections for tenant-caused damages, processing evictions and terminations; and
- (13) for Projects serving Special Needs Populations and/or providing special services to the general tenant population, a supportive services plan, that includes:
  - (A) a description of the services to be provided;
  - (B) a preliminary services budget;
  - (C) funding source(s);
  - (D) identification of the organization(s) that will provide services;
  - (E) a preliminary staffing plan;
  - (F) location of services to be provided off site; and
  - (G) any special eligibility requirements for the services.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1 and 50675.8, Health and Safety Code.

Section 7325. Reporting.

No later than 90 days after the end of each Project fiscal year, the Sponsor shall submit an independent audit of the Rental Housing Development prepared by a certified public accountant in accordance with Department audit requirements, as specified in the Department's Rental Housing Construction Program Information Memorandum dated August 14, 1995, as periodically updated and incorporated by reference. Upon a determination that the cost of meeting this requirement exceeds the potential benefits from it to the Department and to the tenants of the Rental Housing Development, the Department may:

- (a) reduce the required frequency of the audit;
- (b) accept an audited financial statement in lieu of the audit; or
- (c) waive this requirement completely.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1 and 50675.8, Health and Safety Code.

Section 7326. Operating Budget.

- (a) Prior to loan closing, the Sponsor shall submit an initial operating budget to the Department. Such budget shall show all anticipated income; expenses for management, operations and maintenance; debt service; and reserve deposits for the Initial Operating Year.
- (b) For as long as deemed necessary by the Department to ensure compliance with Program requirements, the Sponsor shall submit to the Department for its approval, 60 days prior to the end of each Project fiscal year, a proposed operating budget. The proposed operating budget shall set forth the Sponsor's estimate of the Project's Operating Income, Operating Expenses, debt service for the upcoming year, and any proposed Rent increases pursuant to Section 7312. In lieu of the requirement for submission of complete proposed operating budgets, the Department may require submission of limited budget information, such as a proposed Rent schedule, proposed management fees, and reserve deposit amounts. The Department may re-impose the requirement for submission of complete operating budgets where necessary to ensure compliance with Program requirements.
- (c) The initial and subsequent proposed operating budgets, where required, shall be subject to the approval of the Department based on its determination that the budget line items are reasonable and necessary in light of costs for comparable Rental Housing Developments and prior year

budgets. Actual expenditures in excess of the approved budget amount shall be subject to Department approval.

- (d) The initial operating budget and subsequent proposed operating budgets shall include periodic deposits to the operating reserve, replacement reserve, and any other reserve account required by the Department in accordance with the requirements of Section 7305.
- (e) For Projects with non-Assisted Units or Commercial Space, all budgets submitted pursuant to this section shall show income and uses of income allocated among Assisted Units, Restricted Units, non-Restricted Units, and Commercial Space. The allocation method used for each budget line item shall be subject to Department approval, and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the Project.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1 and 50675.8, Health and Safety Code.

#### Article 5. Rent Write-Down Loans

##### Section 7327. General.

- (a) This Article 5 governs Program loans designated as Rent Write-Down (RWD) loans for the purpose of lowering income limits and corresponding Rent levels for Low Income Housing Tax Credit Program Projects that are otherwise feasible without the use of Program funds.
- (b) This article will govern the award, terms, conditions and uses of RWD loans only. Except where specifically noted the provisions of Articles 1, 2, 3 and 4 do not govern RWD loans

NOTE: Authority cited: Sections 50406(n), 50675.1, and 50675.11, Health and Safety Code. Reference: Sections 50675.2(c), 50675.4(c)(1), and 50675.5(b)(8), Health and Safety Code.

##### Section 7328. Definitions

- (a) The definitions set forth in Section 7301 shall apply to this article.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675, 50675.1(c), 50675.2, Health and Safety Code.

##### Section 7329. Eligibility for RWD Loans.

- (a) In order to receive an RWD loan, the Project must:

- (1) have received an award of 9% or 4% tax credits from TCAC;
  - (2) include the new construction or Rehabilitation of a Rental Housing Development, or conversion of a nonresidential structure to a Rental Housing Development;
  - (3) have sufficient financing and funding commitments to demonstrate that the Project is feasible at marketable rents without the use of Program funds;
  - (4) not receive other funds from the Program; and
  - (5) not have completed construction at the time of the award of Program funds, as evidenced by the lack of a recorded notice of completion or comparable indicator of construction status.
- (b) The Sponsor may be any entity qualified to receive a tax credit allocation from TCAC.

NOTE: Authority cited: Sections 50406(n), 50675.1(c), and 50675.11, Health and Safety Code. Reference: 50675.2(d), 50675.4, 50675.7, Health and Safety Code.

#### Section 7330. Amounts and Terms for RWD Loans.

- (a) RWD loan amounts shall be limited to the sum of a base amount per Assisted Unit plus the amount required to:
  - (1) reduce Rents from the rent structure for Assisted Units that would apply without RWD assistance to the proposed restricted Rents for Assisted Units, by either substituting Program funds for amortized debt or capitalizing a rent subsidy reserve; and
  - (2) preserve Project cash flow at the level that would be generated without participation in the RWD program.

The initial base amount shall be \$3,000. The Department may periodically adjust the base amount to equal the lowest amount necessary to ensure sufficient demand for Program funds, taking into account factors such as the previous demand for RWD funds and the total amount of Program funds available for award under the RWD component.

- (b) RWD funds may be used to capitalize a reserve only if it is not feasible to reduce Rents and maintain Project cash flow by substituting RWD funds for amortized debt. The amount of the capitalized reserve shall not exceed the amount needed to reduce Rents and preserve cash flow at the level that would apply without RWD assistance for a period of 20 years. Thereafter

the assisted units shall continue to be occupied by eligible households at affordable rents for the remaining term of the Regulatory Agreement. The Department shall disburse the funds in a manner to ensure the fiscal integrity of the project for the 20-year period.

- (c) Program funds shall be used for post-construction, permanent financing only, except under an agreement with CHFA to provide construction period financing to eligible projects receiving financing from both CHFA and the Program.
- (d) The interest rate and loan repayment terms shall be as set forth in Section 7308.
- (e) The initial term of the loan shall be 55 years, commencing on the date of recordation of the Program loan documents.
- (f) Upon request by the Sponsor, the Department may approve a 10-year extension of the loan term if the Department determines both of the following are met:
  - (1) The Sponsor is in compliance with the agreement and agrees to continue to comply during the extended term.
  - (2) The extension is necessary to continue operations consistent with Program requirements.

The Department may condition the extension on such terms as it deems necessary to ensure compliance with the requirements of the Program.

- (g) The Program loan shall be secured by the Project real property and improvements, subject only to liens, encumbrances and other matters of record approved by the Department.

NOTE: Authority cited: 50406(n), 50675.1(c), and 50675.11, Health and Safety Code.  
Reference: Sections 50675.6, 50675.8, Health and Safety Code.

#### Section 7331. Occupancy and Rent Requirements

- (a) Occupancy of Assisted Units shall be restricted to one or more of the following income levels: 20%, 30%, 35%, or 40% of State Median Income. Rents for Assisted Units shall not exceed 30% of the applicable income limit.
- (b) No more than 30% of the total Units in a Project assisted with a RWD loan may be funded as Assisted Units.
- (c) The Sponsor shall provide relocation benefits and assistance for tenants directly displaced as a result of RWD funds.

- (d) Assisted Units shall not differ substantially in size or amenity level from non-Assisted Units with the same number of bedrooms, and Units shall not differ in size or amenity level on the basis of income-level restrictions. Assisted Units shall not be segregated from non-Assisted Units, and Units shall not be segregated from each other on the basis of income-level restriction. Within these limits, Sponsors may change the designation of a particular Unit from Assisted to non-Assisted or from one income-restriction to another over time. For Projects involving Rehabilitation or conversion, the Department may permit certain Units to be designated as exclusively market-rate Units where necessary for Fiscal Integrity and where all other Program requirements are satisfied.
- (e) The number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level described in the Regulatory Agreement for the full loan term.
- (f) Sponsors shall select only Eligible Households as tenants of Assisted Units, and shall annually recertify household income and size to determine continued eligibility. If, at the time of tenant recertification, a household's income exceeds the income limit designated for the household's Unit by more than 10% of State Median Income, the Sponsor shall increase the household's Rent to the level applicable to other households with similar incomes, and shall designate the next available Unit as an Assisted Unit restricted for occupancy by households at the income level formerly applicable to the first Unit until the mix required by the Regulatory Agreement is achieved.

NOTE: Authority cited: Sections 50406(n), 50675.1(c), and 50675.11, Health and Safety Code. Reference: 50675.2(b) and (c) and 50675.8, Health and Safety Code.

#### Section 7332. Application Process.

- (a) The Department may issue a NOFA limited to RWD loans and as authorized by Section 7317(c)(4). The NOFA shall specify the amount of RWD funds available, the period during which loan applications may be accepted and the specific requirements of the RWD loan application. The NOFA may establish a minimum point total for rating Projects pursuant to the criteria set forth in Section 7320(b) or similar TCAC criteria, and may provide that Projects meeting or exceeding that minimum score may be eligible for funding so long as funds are available.
- (b) Projects shall not be eligible for an award of funds unless the application demonstrates that all of the following conditions exist:
  - (1) The application meets the eligibility requirements pursuant to Section 7329; and

- (2) The application is complete. Applications shall be deemed complete when the Department is able to assess that the Project is eligible pursuant to Section 7329 and to rate the Project pursuant to Section 7332(a).
- (c) The application shall be made on a form made available by the Department requesting the information required by the Multifamily Housing Program Regulations and shall include the proposed number of Assisted Units and the income and Rent levels to be achieved in the Assisted Units as a result of the RWD loan. The application shall also specify the proposed use of the proceeds of the RWD loan, which may include a capitalized rent reserve fund or a reduction in the approved permanent amortized financing for the Project.

NOTE: Authority cited: Sections 50406(n), 50675.1(c), and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c), 50675.6, 50675.1(d), Health and Safety Code.

Section 7333. Legal Documents.

- (a) The provisions of Section 7321(a) shall apply to loans made under this article.
- (b) The Department shall enter into a Regulatory Agreement with the Sponsor for not less than the original term of the loan that shall be recorded against the Project property title prior to the disbursement of funds. The Regulatory Agreement shall include, but not be limited to, the following:
  - (1) the number, type and income level of Assisted Units pursuant to Section 7331;
  - (2) provisions related to a management plan pursuant to Section 7324;
  - (3) provisions related to a Rent schedule, including initial Rent levels for Assisted Units and non-Assisted Units pursuant to subsections (a) and (b) of Section 7331;
  - (4) conditions and procedures for permitting Rent increases;
  - (5) provisions relating to annual reports, inspections and independent audits pursuant to Section 7325;
  - (6) provisions regarding the deposit and withdrawal of funds to and from reserve accounts;
  - (7) assurances that the Rental Housing Development will be maintained in a safe and sanitary condition in compliance with state and local housing codes and the management plan, pursuant

to Section 7324;

- (8) description of the conditions constituting breach of the Regulatory Agreement and remedies available to the parties thereto;
  - (9) provisions governing use and operation of non-Assisted Units and common areas to the extent necessary to ensure compliance with Program requirements;
  - (10) provisions relating to enforcement of Program requirements by tenants;
  - (11) special conditions of loan approval imposed by the Department;
  - (12) provisions specifying that the Regulatory Agreement shall be binding on all assigns and successors in interest of the Sponsor and that all sales, transfers, and encumbrances shall be subject to Section 7322;
  - (13) for Projects serving Special Needs Populations and/or providing services to the general tenant population, provisions regarding the implementation and maintenance of services and facilities for the targeted Special Needs Population group and/or general tenant population; and
  - (14) other provisions necessary to assure compliance with the requirements of the Program.
- (c) All loans shall be evidenced by a promissory note payable to the Department in the principal amount of the loan and stating the terms of the loan consistent with the requirements of the Program. The note shall be secured by a deed of trust on the Project property naming the Department as beneficiary or by other security acceptable to the Department; this deed of trust or other security shall be recorded junior only to such liens, encumbrances and other matters of record approved by the Department and shall secure the Department's financial interest in the Project and the performance of Sponsor's Program obligations.

NOTE: Authority cited: Sections 50406(n), 50675.1(c) and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c), 50675.6 and 50675.8, Health and Safety Code.

Section 7334. Sales, Transfers, Encumbrances, Defaults, and Cancellations.

- (a) the provisions of Sections 7322 and 7323 shall apply to this article.

NOTE: Authority cited: Sections 50406(n), 50675.1(c), and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c), 50675.8, 50675.10, Health and Safety Code.

Section 7335. Management and Maintenance.

- (a) the provisions of Section 7324 shall apply to this article.

NOTE: Authority cited: Sections 50406(n), 50675.1(c), and 50675.11, Health and Safety Code. Reference: Sections 50675.1(c) and 50675.8, Health and Safety Code.

Section 7336. Reporting.

- (a) the provisions of Section 7325 shall apply to this article.

NOTE: Authority cited: Sections 50406(n), 50675.1(c), and 50675.11 Health and Safety Code. Reference: Sections 50675.1(c) and 50675.8, Health and Safety Code.