

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF STATE FINANCIAL ASSISTANCE**

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March 28, 2022

MEMORANDUM FOR: Sponsors of Projects Funded by HCD
That Are At-Risk of Conversion to Market Rate

FROM: Jennifer Seeger, Deputy Director
Division of State Financial Assistance

SUBJECT: **Portfolio Reinvestment Program
Notice of Funding Availability and Guidelines**

The California Department of Housing and Community Development (Department or HCD) is announcing the availability of approximately \$285 million in Portfolio Reinvestment Program (PRP) funding for the purposes of making loans to rehabilitate, capitalize operating subsidy reserves, and extend the long-term affordability of Department-funded Rental Housing Developments that have an affordability restriction that has expired or will expire by December 31, 2026.

Background

Potential conversion of affordable housing to market rate housing is an ongoing and critical statewide problem. Some housing Projects secured with Department loans are reaching the end of their affordability periods and are at-risk of converting to market rate housing. Lack of access to financial resources to rehabilitate these Projects and extend the affordability periods increases the risk of conversion to market rate housing. The purpose of the PRP is to decrease the risk of conversion to market rate housing, and extend the remaining useful life and the long-term affordability of these Department-funded housing Projects by making available Project loans for rehabilitation and capitalized operating reserves.

Funding available under this Notice of Funding Availability and Guidelines (NOFA) is derived from the Coronavirus State Fiscal Recovery Fund (CSFRF), established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2). The funds have been allocated to this program through the 2021-22 California state budget. Activities funded through CSFRF must comport with federal requirements.

Eligibility

Eligibility under this NOFA is limited to HCD Portfolio Projects that meet the requirements for the PRP as specified in this NOFA.

Primarily, eligible Projects must comply with the definition of Rental Housing Development in Health & Safety Code section 50675.2 and the following additional requirements:

- All HCD regulatory agreements have expired but at least one has not been terminated by the Department or will expire on or before December 31, 2026; and
- Provide a development sources and uses budget demonstrating that the Project rehabilitation costs are not funded through low-income housing tax credits; and
- Sponsor and borrower may not be in breach or in default of the original program loan documents nor under any other Department program agreements, except where the only uncured breach is that the maturity date of the loan has passed.

A full list of eligibility requirements is contained within the NOFA.

The Department has developed a list of the Projects that may be eligible for PRP funding. This list, known as the “Regulatory Agreement Expiration Report,” is available on the Department’s PRP webpage. Sponsors with concerns or questions about the information on this list or your Project’s eligibility status should contact the Department at portfolioreinvestment@hcd.ca.gov. The Department shall verify eligibility for PRP funding at the time of application.

Application Submittal and Award Timeframes

Applications will be accepted via the Department’s online application portal beginning April 29, 2022. Applications will be accepted on an over-the-counter basis through July 29, 2022. Awards will be made on a continuous basis as applications are reviewed, underwritten, and approved, until funds are exhausted.

All application materials for eligible Projects **must be submitted electronically** via the application portal on the Department’s [website](#) no later than **5:00 p.m. Pacific Daylight Time on July 29, 2022**. Specific submittal instructions will be included in the application form, which is expected to be available on the website no later than April 8, 2022. Personal deliveries will not be accepted. No facsimiles, late submittals, incomplete applications, courier deliveries, or walk-in application packages will be accepted.

Webinar and Technical Assistance

The Department will conduct an online application workshop. The workshop details will be posted on the Department’s website. If you have any questions, please email portfolioreinvestment@hcd.ca.gov.

Enclosure

PORTFOLIO REINVESTMENT PROGRAM

NOTICE OF FUNDING AVAILABILITY AND GUIDELINES



**Gavin Newsom, Governor
State of California**

**Lourdes M. Castro Ramírez, Secretary
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March 28, 2022

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I. Overview

A. Funding available

1. The California Department of Housing and Community Development (Department or HCD) is announcing the Portfolio Reinvestment Program (PRP), which will make approximately \$285 million available for the purposes of making loans to rehabilitate and extend the long-term affordability of Department funded Rental Housing Developments that have an affordability restriction that has expired or will expire by December 31, 2026. The PRP may also make forgivable loans to capitalize short-term operating subsidy reserves if Projects apply for and receive a PRP rehabilitation loan.
2. Funding available under this Project solicitation is derived from the Coronavirus State Fiscal Recovery Fund (CSFRF), established by the federal American Rescue Plan Act of 2021 (ARPA) (Public Law 117-2). The funds have been allocated to this program through the 2021-22 California state budget. Activities funded through CSFRF must comport with federal requirements.

B. Timeline

This Notice of Funding Availability and Guidelines (NOFA) is offered on an over-the-counter (OTC) basis, which means that the Department will accept applications on an ongoing basis during the application period and make awards in order of submittal of complete, eligible applications. All applications received on the same day will be assigned an order of receipt based on time received. The Department will begin accepting PRP applications starting April 29, 2022 and continue accepting applications through 5:00 p.m. Pacific Daylight Time (PDT) on July 29, 2022, or until such earlier time as the Department has received enough eligible applications to reasonably use all the funds available.

Timeline	
NOFA Release	March 28, 2022
Application Release	April 8, 2022
Application OTC Period	April 29 to July 29, 2022
Award Announcements	Continuously as applications are approved, approximately 4-5 months after application submittal, but no later than February 15, 2023
Funds encumbered through an executed Standard Agreement	No later than June 30, 2024
Capitalized Operating Subsidy Reserve expenditure deadline	June 30, 2026
Permanent Loan Conversion	No later than August 31, 2026

C. Authorizing Legislation and Applicable Law

1. Assembly Bill No.140 (Chapter 111, Statutes of 2021), which was signed by Governor Gavin Newsom on July 19, 2021, created the statutory basis for the PRP by adding Chapter 5.5 (commencing with section 50606) to Part 2 of Division 31 of the Health and Safety Code (HSC).
2. HSC section 50607 subdivision (d) states, “The department may adopt guidelines to implement this chapter. Any guidelines adopted pursuant to this section are hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).”
3. The MHP Final Guidelines (MHP Guidelines), effective June 19, 2019, are hereby incorporated by reference. In the event of a conflict between any of this NOFA and the MHP Guidelines, the provisions of this NOFA are controlling.
4. Uniform Multifamily Regulations (UMR) (California Code of Regulations, Title 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference. In the event of a conflict between any of this NOFA and the UMR, the provisions of this NOFA are controlling.
5. This NOFA serves as the Department’s guidelines for administration of the PRP. As such, the NOFA establishes the terms, conditions, forms, procedures, and other mechanisms that the Department deems necessary to exercise its powers and to perform its duties pursuant to the PRP. The matters set forth herein are regulatory mandates and are adopted as regulations that have the dignity of statutes. (*Ramirez v. Yosemite Water Company, Inc.* (1999) 20 Cal. 4th 785, 799 [85 Cal.Rptr.2d 844].)
6. The Original HCD Loan regulations, guidelines, and terms specific to the Original HCD Loan, as well as the PRP NOFA and terms shall govern the Project’s recorded regulatory agreement and other loan documents. In addition, PRP specific terms and conditions will be memorialized in a Standard Agreement.
7. The Department will only amend this NOFA as necessary and in accordance with the Department’s guideline authority pursuant to HSC section 50607, subdivision (d).

II. Program requirements

A. Eligible Projects

To be eligible for a PRP award, the Project must currently have an Original HCD Loan recorded on the property, and must meet all the following additional requirements:

1. All HCD regulatory agreement(s) have expired or will expire on or before December 31, 2026;
2. The HCD regulatory agreement has not been terminated by HCD;

3. The development sources and uses budget included in the application demonstrates that the Project rehabilitation costs will not be funded through low-income housing tax credits and validates the need for the PRP loan. The sources and uses must also demonstrate that the development budget is fully funded for the rehabilitation costs as submitted. Furthermore, tax credits, private activity bonds, and recycled bonds may not be used to fund the Project for at least ten (10) years after the PRP rehabilitation loan is recorded;
4. The application demonstrates that the Project has construction period rehabilitation financing provided by another lender(s), as evidenced by a letter of interest or commitment letter acceptable to the Department in its sole discretion. The Department's PRP rehabilitation loan will not be disbursed until permanent loan closing according to subsection II(G)(5) below;
5. The Project must comply with the definition of Rental Housing Development including the requirement that the Project must have five (5) or more units; and
6. The Project may not comprise two or more sites unless the Original HCD Loan is already secured on each of those sites.

B. Eligible Applicants

The Applicant must be an Eligible Sponsor as described below:

1. Eligible Sponsor.
 - a. A Sponsor shall be any individual, Joint Venture, partnership, limited partnership, trust, corporation, limited liability company, local public entity, or Tribal Entity, or any combination thereof.
 - b. If a Sponsor is a Joint Venture and qualifies as an eligible Sponsor under this section 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. Neither the borrower limited partnership, nor a network of entities affiliated with a common parent entity are Joint Venture entities within the meaning of this section.
 - i. For purposes of PRP, Joint Venture means "an association of two or more persons, or entities who combine their property, skill or knowledge to carry out a single business enterprise for profit."
 - c. A Sponsor may be organized on a for-profit, limited profit, or nonprofit basis.
 - d. In order to be eligible for funding, if Applicant is not the current owner of the Project, the Applicant must demonstrate experience relevant to owning and developing affordable rental housing through evidencing current capacity including financial resources, an office, and payroll, and all of the following:
 - i. Successful prior ownership and development of affordable rental housing within the most recent 10-year period.
 - ii. Employment of a staff with demonstrated experience owning and developing affordable rental housing.

- iii. Provides evidence that the Project and proposed transaction complies with Preservation Notice Law requirements, as stated in Government Code Sections 65863.11 and/or .13.
 - e. Sponsors shall affirmatively certify regarding their present capacity to rehabilitate, own, and manage the Project and include a staffing chart as set forth in the application.
 - f. Where an entity is represented as being the Sponsor, but relies on the capacity of a parent organization, specific employee, or other entity having control of the Sponsor, the Sponsor may be deemed ineligible. Please contact the Department if you have Eligible Sponsor questions prior to application submission.
 - g. If a Sponsor relies upon the experience of its principal to meet the Sponsor eligibility requirements, documentation of the principal's experience is required as set forth in the application.
 - h. Tribal Entities may contract with an experienced developer who will not be a general partner to meet the requirements of this section provided that the contract is fully executed at time of application submission and shall be in effect at least until permanent loan closing.
 - i. For purposes of PRP, Tribal Entity means a Tribe (a federally recognized California Indian Tribe that meets the definition of Indian tribe under 25 United States Code section 4103) or a Tribal Designated Housing Entity under 25 USC. 4103 (22).
2. Sponsor(s) and borrower may not be in breach or default of the Original HCD Loan nor under any other Department program, except for the maturity of an unpaid loan.
3. If Applicant is not the current owner of the Project, current owner must request Department approval of a change of ownership no less than 30 days prior to submittal of application, and the Department must issue a formal approval of the change of ownership prior to submittal of the application. The current owner must provide evidence that the transaction complies with Preservation Notice Law as stated in Government Code Section 65863.11 and/or .13. Applicant must have site control in compliance with UMR section 8303.

C. Eligible uses of funds

1. PRP funds shall be used only for eligible costs that are incurred on the Project, approved by the Department, as set forth in this section. The Project scope of work shall be memorialized in the PRP Project report and Standard Agreement. Eligible uses of funds include:
 - a. Rehabilitation work to extend the remaining useful life of the Project through the end of the PRP loan term;
 - b. Site improvements that are required by a regulatory agency;

- c. 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;
 - d. Environmental hazard reports, surveys, and investigations;
 - e. Costs of relocation benefits and assistance required by law;
 - f. Carrying costs during construction, including insurance, construction financing fees and interest;
 - g. Building permits and state and local fees;
 - h. Escrow, title insurance, recording, and other related costs;
 - i. Costs for items intended to assure the completion of construction, such as contractor bond premiums;
 - j. Accessibility improvements that meet or exceed local, state, and federal accessibility requirements, as approved by the Department;
 - k. Installation of broadband internet and/or energy/water conservation features, as approved by the Department;
 - l. A short-term Capitalized Operating Subsidy Reserve (COSR) as further set forth in subsection F below.
 - m. If the Project has no other funding source that is funding a developer fee, PRP funds can be used to fund administration of the rehabilitation activity, up to the lesser of 5 percent of the PRP rehabilitation loan or the PRP administrative allowance cap of \$750,000, whichever is lower. If there is a developer fee paid by another funding source, the developer fee and PRP administrative allowance shall, in the aggregate, be subject to the developer fee limit set forth at UMR section 8312(a). The PRP administrative allowance is considered to be part of the developer fee and counts toward the developer fee limit. The administrative allowance will be capped at \$750,000.
2. The Department reserves the right to disallow costs that do not constitute reasonable Project costs, as determined by the Department in its sole and absolute discretion. The Department reserves the right, consistent with applicable law, to require prior written approval from the Department for all reserve withdrawals, whether the reserve was required by the Department or not.

D. Threshold application requirements

- 1. Demonstrate readiness to commence rehabilitation within 180 days of award, including a commitment or letter of interest from a lender for the construction period rehabilitation funds. "Commencement of rehabilitation" means the first alteration of any wall, ceiling, floor, or other structural part of a building.
- 2. Compliance with the requirements specified in this NOFA.

3. Submittal of a complete Department PRP application by the application deadline, using unaltered application forms and including all required attachments, and adhering to submittal protocols.
4. Submittal of a Property Condition Assessment (PCA) that was prepared by a third-party within 12 months of the application submittal date, and that documents all physical needs and all repairs required within five (5) years of the date of a third-party PCA in accordance with Fannie Mae guidelines and instructions provided by the Department. All identified repairs required within five years of the PCA must be included in the rehabilitation scope of work submitted with the application.
5. Demonstrate Fiscal Integrity as stated in MHP Guidelines section 7301(j) by the 10th year after the date of recordation of the PRP rehabilitation loan.
6. Each Applicant shall submit an authorizing resolution that, in the Department's reasonable determination, materially comports with the PRP requirements and is legally sufficient. In addition, each private entity Applicant shall submit a complete set of its organizational documents (and all amendments thereto).
7. HCD shall not approve a PRP Standard Agreement until it receives a complete set of authorizing, formational, and organizational documents from the Applicant, as required. This set of documents shall also include, as applicable, a legally sufficient authorizing resolution from any public agency Applicant.
8. Any applicant that has misrepresented any material facts related to the Sponsor's compliance with any of the Department's loans will not be eligible for a PRP award. Also, misrepresentation of material facts related to the Sponsor's PRP application is grounds for ineligibility for a PRP award.

E. New affordability & Rent increase requirements for Existing Tenants in Projects regulated by formula-based Rent increases

Projects with an Original HCD Loan that requires formula-based rents will be restricted by a PRP regulatory agreement imposing the following affordability and Rent and income requirements:

1. The Project will be converted to Area Median Income (AMI)-Based Rent and Income limits under the PRP regulatory agreement, and each Assisted Unit will be restricted by a specific percentage of AMI, as follows:
 - a. Units designated in the Original HCD Loan regulatory agreement as "Low Income" will be set at or below 60 percent of AMI in the PRP regulatory agreement.
 - b. Units designated "Very Low Income" in the Original HCD Loan regulatory agreement will be set at or below 30 percent of AMI. If the Project does not achieve Fiscal Integrity (as defined in the MHP Guidelines section 7301) with all Very Low-Income units redesignated at 30 percent of AMI, the Department will redesignate a sufficient number of units at 50 percent of AMI in order to meet the Fiscal Integrity requirement.
 - c. Despite the forgoing subsection(a) above, in counties where 100 percent of AMI under the current Multifamily Tax Subsidy Project (MTSP) Income

Limits is equal to the current statewide non-metro median income, as shown in the PRP application form, Sponsors may designate up to 20 percent of Assisted Units that were designated in the Original HCD Loan regulatory agreement as “Low Income” at 80 percent of AMI in the PRP regulatory agreement.

- d. Units that were not Assisted in the Original HCD Loan regulatory agreement, but which the Sponsor chooses to make Assisted under the PRP regulatory agreement may be set at any AMI level up to a maximum of 60 percent of AMI.
2. Assisted Units that are vacant or that become vacant after the PRP application is submitted shall be charged rents in accordance with the Original HCD Loan until the PRP regulatory agreement is recorded. After the PRP regulatory agreement is recorded, the AMI-Based Rent and Income limits shall apply.
 3. Rent rules for Existing Tenants
 - a. For Existing Tenants with household incomes that do not exceed 35 percent of AMI, annual Rent increases are capped at 5 percent.
 - b. For Existing Tenants with incomes greater than 35 percent of AMI, annual Rent increases are capped at 10 percent for purposes of the PRP loan.
 - c. Rent increases may be further restricted by other funding sources, other State, or local law in which case the most restrictive requirements will apply.
 - d. In addition, if an Existing Tenant’s Rent is or reaches 50 percent or more of the tenant’s household income, no rent increases are permitted. However, when the Existing Tenants income increases sufficiently that their Rent is below 50 percent of their household income as identified at time of annual income re-certification, their Rent can continue to increase as specified above.
 - e. The rules governing annual Rent increases will continue until an Existing Tenant’s Rent reaches the Rent limit for the AMI requirement for the Existing Tenant’s unit, as updated annually and posted on the Department’s website. Once an Existing Tenant’s Rent reaches the published Rent limit for that unit, the unit’s Rent will be restricted solely by the published AMI-Based Rent and will no longer be subject to the 5 percent or 10 percent Rent increase rules. After the unit converts to the AMI-Based Rent, there is no evaluation or prohibition concerning whether the Existing Tenant’s Rent exceeds 50 percent of the tenant’s household income. The Rent can increase according to the published AMI-Based Rent and Income limit each year.

4. Rent Rules for Over-income Tenants

- a. Existing Tenants with household incomes that exceed 80 percent of AMI will be required to pay 30 percent of their actual household income for Rent after proper noticing is provided to the tenant as required in subsection II(E)(5).
- b. Tenants who move into the Project after the PRP application is submitted and whose incomes increase to more than 60 percent of AMI in an annual income recertification conducted after the PRP regulatory agreement is recorded will be required to pay 30 percent of their actual household income for Rent after proper noticing is provided to the tenant as required in subsection II(E)(5).

5. Notice requirements

- a. Prior to the implementation of the first Rent increases under PRP, Applicant shall provide Existing Tenants with the following notifications of Rent increases:
 - i. Notice six (6) months prior to Rent increase with an estimate of the amount of the increase;
 - ii. Notice 90 days prior to the actual Rent increase with the exact amount of the new Rent.
 - iii. Rent notices may be further governed by other funding sources, other State, or local law, in which case the most restrictive requirements will apply.

F. Capitalized Operating Subsidy Reserve requirements

The purpose of the Capitalized Operating Subsidy Reserve (COSR) is to address Project operating deficits associated with Assisted Units. The COSR funds will be disbursed annually as described in subsection II(F)(2). The Department shall disencumber any unused funds not expended by June 30, 2026.

1. COSR funding amount

The total COSR funding amount will be the lesser of 25 percent of the PRP rehabilitation loan or the amount needed to pay anticipated operating deficits attributable to the Assisted Units from construction loan closing through June 30, 2026. In determining the operating deficit amount, the Department shall consider individual Project factors, including, but not limited to the following:

- a. Operating deficit, which means negative Operating Income after payment of approved Operating Expenses as defined in UMR section 8301(k), required reserve deposits, and mandatory debt service.

- b. Anticipated Assisted Unit Rents with a 2.5 percent annual escalator, unless use of a lower or higher escalator is required by another funding source or is supported by compelling market or other evidence.
 - c. Anticipated Project vacancy rates, which shall be assumed to be 5 percent unless use of a lower or higher rate is required by another funding source or is supported by compelling market or other evidence.
 - d. Prior Fiscal Year's HCD approved Operating Expenses with a 3.5 percent annual escalator, unless use of a lower or higher escalator is required by another funding source or is supported by compelling market or other evidence.
2. COSR disbursements
- a. Initial COSR disbursement may be advanced at construction close based on the Department's review and approval of the first-year operating deficit attributable to Assisted Units according to subsection II(F)(1).
 - b. Subsequent disbursements will be based on the Department's review and approval of the Project's prior year operating deficits attributable to Assisted Units as stated in bifurcated audited financial statements that show actual rent revenue and pro rata share of other revenues related to Assisted Units and the operating expenses attributable to Assisted Units. These disbursements may be adjusted to reconcile any prior over-disbursed or under-disbursed amounts.
 - c. The final reconciliation will be based on operating deficits attributable to Assisted Units as determined from the Department's review and approval of the Project's unaudited income statements on forms provided by the Department covering the period from the first day of the Fiscal Year through June 30, 2026. This must be submitted to the Department by August 15, 2026. Any final disbursements may be adjusted to reconcile any prior over-disbursed or under-disbursed amounts.
 - d. If, after review of the Project's annual audits, the Department finds that the Project did not need as much from the COSR as was previously disbursed, the Department may:
 - i. Reduce the amount of COSR payments in a subsequent year to make up the difference between what the Project received and the actual amount of the operating deficit attributable to the Assisted Units in the prior year.
 - ii. Require the Project to return to the Department the amount provided that was in excess of the amount of the operating deficit attributable to the Assisted Units; or
 - iii. Disencumber any remaining COSR funds after the final disbursement is calculated.

G. Funding amounts and terms

1. Funds available

The maximum amount of PRP funds available under this NOFA is approximately \$285 million. There are two set asides within this NOFA:

- a. A \$50 million set aside for small Projects, which are defined as having from 5 to 20 units.
- b. A \$100 million set aside for Residential Hotels, as defined in the MHP Guidelines section 7301.

If the set asides are not fully utilized by September 15, 2022, the remaining funds will be made available to the general funding pool.

2. Maximum award amount

- a. Small Project Set Aside. Within the small Project set aside, the maximum PRP rehabilitation loan amount for each Project, not including a COSR award, is \$200,000 per Assisted Unit, with a \$2.5 million maximum per Project. Projects eligible for the small Project set aside are permitted to apply for PRP funds, outside of the \$50 million small Project set aside, if the rehabilitation requires more than \$2.5 million.
- b. Outside of the Small Project Set Aside. The maximum PRP rehabilitation loan amount for each Project, not including a COSR award, is \$200,000 per Assisted Unit, with a \$20 million maximum per Project.
- c. Projects not applying for the small project set aside that are under the \$20 million loan limit may qualify for additional funding if they have any of the following high-cost expenses. No more than two high-cost factors may be used to increase the otherwise applicable loan limit. In no event may the loan amount including the applicable increases exceed \$20 million. High-cost for purposes of this subsection may be any of the following:
 1. Temporary or permanent relocation of at least half of the tenant households (boost of 25 percent of projected relocation costs, as indicated by an HCD-approved relocation plan);
 2. Elevator replacement or repair that represents 25 percent or more of the total hard construction costs, as indicated by an elevator study (boost of 25 percent of projected elevator costs);
 3. Seismic work required by an enforcement agency accounting for 25 percent or more of the total hard construction costs, as specified by a letter from the enforcement agency (boost of 25 percent of projected seismic costs);
 4. Structural work required by an enforcement agency that accounts for 25 percent or more of the total hard construction costs, as specified by a letter from the enforcement agency (boost of 25 percent of projected structural costs);

5. Required environmental remediation accounting for 25 percent or more of the total hard construction costs, as specified by a letter from a third-party environmental company (boost of 25 percent of projected environmental costs); or
 6. Accessibility modifications accounting for 25 percent or more of the total hard construction cost, as specified by an accessibility study performed by a certified access specialist (boost of 25 percent of projected accessibility costs).
- d. The COSR amount may not exceed 25 percent of the Project PRP rehabilitation loan and is subject to the underwriting set forth in subsection II(F) of this NOFA.
 - e. Projects will not automatically receive the maximum allowable loan amount. If the Project's scope of work, construction cost estimate (as prepared by a general contractor) and development budget do not merit awarding the maximum amount, the Department will reduce the maximum Project loan amount before making an award.

3. Minimum award amount

Projects must demonstrate (through Project's scope of work, construction cost estimates prepared by a general contractor, and development budget) the need for a minimum of \$250,000 in PRP eligible uses of funds described in subsection II(C), in order to receive a PRP award.

4. Application evaluation process, criteria, and award process

- a. For OTC funding, PRP applications will be accepted via the Department's online application portal and evaluated on a first-come, first served basis at any time beginning April 29, 2022 through July 29, 2022, or until the available funds are exhausted, whichever occurs first.
- b. All application materials for eligible Projects **must be submitted electronically** via the application portal on the Department's [website](#) no later than **5:00 p.m. Pacific Daylight Time on July 29, 2022**. Specific submittal instructions will be included in the application form, which is expected to be available on the website no later than March 30, 2022. Personal deliveries will not be accepted. No facsimiles, late submittals, incomplete applications, courier deliveries, or walk-in application packages will be accepted.
- c. Applications must be on the Department's forms. The forms cannot be altered or modified by the applicant. Excel forms must be submitted in Excel format, not as a PDF document.
- d. The Department will evaluate applications for compliance with the minimum program requirements set forth in this NOFA.
- e. On a continuous basis until all funds are exhausted, the Department will send an award letter as applications are reviewed, underwritten, and approved.

5. Types of assistance

- a. There are two types of assistance offered by the PRP: (1) rehabilitation loans; and (2) COSR forgivable loans, which are only available in conjunction with a PRP rehabilitation loan.
- b. PRP Rehabilitation Loans. Project PRP rehabilitation loans are for permanent financing, and the permanent loan conversion, evidenced by the PRP loan documents recordation, must occur by August 31, 2026. Principal and accumulated interest is due and payable upon completion of the term of the loan. The PRP rehabilitation loan will bear simple interest at the rate of 3 percent per annum on the unpaid principal balance. The Department requires annual loan payments in the minimum amount necessary to cover the costs of Project monitoring. For the first 30 years of the PRP rehabilitation loan term, the amount of the required loan payments is .42 percent per annum of the original principal balance. This required loan payment is the “monitoring fee,” and is due every year for the full term of the Regulatory Agreement, regardless of any pre-payment or repayment on the PRP loan. For Projects funded through the small Project set aside, the minimum loan term is 30 years; for all other Projects that receive PRP loans, the minimum loan term is 55 years.
 - i. PRP rehabilitation loan funds will be disbursed through escrow at the time of the Project’s permanent loan conversion.
- c. COSR Forgivable Loans. COSR forgivable loans will be disbursed (1) through escrow at construction loan closing for the initial disbursement, and (2) through annual installments thereafter. If the Project meets the requirements of the PRP rehabilitation loan funds and complies with the PRP COSR requirements, the COSR forgivable loan will be forgiven. COSR loans must be fully expended by the Project Sponsor by June 30, 2026.

6. Commencement of rehabilitation construction deadline

- a. All PRP awarded Projects must commence rehabilitation construction no later than **180 days from the date of PRP award**. For the purposes of PRP, commencement of rehabilitation construction means the first alteration of any wall, ceiling, floor, or other structural part of a building. The Department may, in its sole and absolute discretion, extend this deadline for a period not to exceed 90 days. Failure to meet the commencement of rehabilitation construction deadline, or any Department-approved extension, will result in the forfeiture of the award and will also cause the Department to assess negative points when scoring any future application by the Sponsor(s) for any Department funding within the following three years.
- b. Within seven (7) months of award, the Sponsor shall submit documentary evidence to the Department that rehabilitation construction commenced within the statutory 180-day time period. If the Department extends the deadline for commencement of rehabilitation construction, as authorized, the Sponsor’s deadline for submitting the foregoing documentary evidence shall be extended

in the same increment as the extension for commencement of rehabilitation construction. Qualifying forms of documentary evidence include:

- i. Recordation of a notice of commencement,
 - ii. Date- and time-stamped photographs,
 - iii. Physical inspection report, or
 - iv. Other documentation subject to the approval of the Department.
- c. Failure to submit qualifying documentary evidence within the specified timeframes may result in forfeiture of the award and may result in an assessment of negative points relative to any future application for Department funding.

7. Legal documents

a. Standard agreement

Upon the award of PRP funds to a Project, the Department shall enter into one or more agreements with the Sponsor(s), including an STD 213, Standard Agreement, which shall encumber funds from the PRP, subject to specified conditions. The agreement or agreements shall include, but not be limited to, the following provisions:

1. A description of the approved Project and the permitted uses of funds;
2. The amount and terms of the PRP rehabilitation loan;
3. The amount and terms of the COSR forgivable loan;
4. The regulatory restrictions to be applied to the Project through the regulatory agreement;
5. Provisions governing the rehabilitation construction work and, as applicable, the acquisition of the Project site, and the disbursement of loan proceeds;
6. The income, occupancy, and Rent restrictions to be imposed on the Project through a regulatory agreement recorded against the property of the Project;
7. The Department approved Project development budget and sources and uses of funds and financing;
8. Performance milestones, and other progress metrics, governing the commencement and completion of the rehabilitation work and achievement of stabilized occupancy by eligible households, along with the remedies available to the Department in the event of a failure to meet such milestones or metrics;
9. Requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of loan proceeds;
10. Requirements for the execution and recordation of the agreements and documents required under the PRP;

11. Special conditions, documented in the Project report and/or standard agreement, imposed as part of the Department's approval of the Project;
12. Provisions regarding tenant relocation, in compliance with MHP Guidelines section 7315;
13. Provisions relating to the placement of a sign on or in the vicinity of the Project 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;
14. Terms and conditions required by federal and state law;
15. Requirements for reporting to the Department;
16. Requirements for complying with Preservation Notice Law;
17. Terms and conditions for the inspection and monitoring of the Project in order to verify compliance with the requirements of the PRP;
18. Provisions regarding builders' risk insurance, fire insurance, and adequate liability insurance during rehabilitation;
19. Provisions requiring compliance with rehabilitation requirements stated in MHP Guidelines section 7316, and submittal of Certificate of Completion, Permanent Certificate of Occupancy, and Final Cost Certification Audit;
20. Provisions requiring stabilized occupancy prior to permanent loan closing;
21. Remedies available to the Department in the event of a violation, breach, or default of the agreement;
22. Provisions regarding Sponsor liability. Specifically, the Sponsor will remain liable to the Department for compliance with and the performance for all of the PRP requirements regardless of any Department-approved transfer or assignment of interest. Likewise, each co-Sponsor will remain jointly and severally liable to the Department for compliance with and the performance for all of the PRP requirements regardless of any Department-approved transfer or assignment of interest.
23. Other provisions necessary to ensure adherence to the objectives and requirements of the PRP.

b. Regulatory agreement

The Department shall enter into a regulatory agreement with the Sponsor(s) for not less than the term of the PRP loan. The regulatory agreement shall be recorded against the Project real property and improvements prior to the disbursement of funds. The regulatory agreement shall include, but not be limited to the following:

1. PRP terms, conditions, and restrictions will be expressly incorporated into the PRP loan documents;
2. Demographic requirements imposed by the Original HCD Loan may be incorporated into the PRP regulatory agreement to the extent those

requirements are able to be achieved, as determined by the Department in its sole discretion;

3. The number, type, and income level of Assisted Units pursuant to UMR section 8304;
4. Standards for tenant selection pursuant to UMR section 8305;
5. Provisions regulating the terms of the rental agreement pursuant to UMR section 8307;
6. Provisions related to an annual operating budget approved by the Department pursuant to MHP Guideline section 7326;
7. Provisions related to a management plan pursuant to MHP Guideline section 7324;
8. Provisions related to a Rent schedule, including initial Rent levels for Assisted Units and non-Assisted Units;
9. Conditions and procedures for permitting Rent increases pursuant to this NOFA;
10. Provisions for limitations on distributions pursuant to UMR section 8314;
11. Provisions relating to annual reports, inspections and independent audits pursuant to this NOFA and MHP Guideline section 7325;
12. Provisions regarding the deposit and withdrawal of funds to and from reserve accounts;
13. 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 MHP Guideline section 7324;
14. Description of the conditions constituting breach of the regulatory agreement and remedies available to the parties thereto;
15. Provisions governing use and operation of non-Assisted Units and common areas to the extent necessary to ensure compliance with program requirements;
16. Provisions relating to enforcement of PRP requirements by tenants;
17. Special conditions of loan approval imposed by the Department;
18. Provisions specifying that the PRP 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 MHP Guideline section 7322;
19. Other provisions necessary to assure compliance with the requirements of PRP.

- c. COSR agreement
 - 1. All COSR funds provided in the form of a forgivable loan shall be evidenced by a COSR Agreement recorded against the Project real property and improvements. The performance of the covenants and conditions under the COSR Agreement shall be secured by the PRP deed of trust described in subsection II(G)(7)(d)(1) below.
- d. Other agreement(s)
 - 1. All loans and forgivable loans shall be evidenced by a promissory note payable to the Department in the principal amount of the loan(s) and state the terms of the loan(s) consistent with the requirements of the PRP. The promissory note shall be secured by a PRP deed of trust on the Project property naming the Department as beneficiary. This deed of trust 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 the Sponsor(s)'s PRP obligations.
 - 2. The Original HCD Loan principal shall be carried over and remain as a separate Original HCD Loan principal. The Original HCD Loan accrued interest shall be carried over and remain as a separate Original HCD Loan accrued interest. Except for loans made through the HOME Investment Partnerships Program (HOME), the Original HCD Loan principal and the Original HCD Loan accrued interest will be evidenced in the PRP promissory note together with the PRP rehabilitation loan amount and any COSR forgivable loan amount.
 - 3. Original HCD Loans that are forgivable upon satisfactory compliance with the original regulatory agreement requirements will remain on title and shall continue until the end of their existing term.
 - 4. Existing HOME Projects will receive a loan extension to be coterminous with the PRP loan, and continue to have a separate HOME Promissory Note, secured by a Deed of Trust and HOME regulatory agreement, due to federal requirements.
 - 5. The Department shall subordinate its liens to new construction financing provided by a senior lender subject to UMR section 8315.
 - 6. PRP loan documents will be executed and recorded, as follows:
 - a. If the Original HCD Loan has matured and the Original HCD Loan regulatory agreement has already expired, the PRP loan documents will be recorded at construction loan closing, but the PRP rehabilitation loan funds will not be released until permanent loan conversion.
 - b. If the Original HCD Loan, including the Original HCD Loan regulatory agreement, has not matured, and is not expected to mature prior to permanent loan closing, the PRP loan documents will be recorded at

permanent loan conversion, unless the Project is receiving a COSR. If the Project is receiving a COSR, the PRP loan documents and COSR Agreement will be recorded at construction loan closing, but the PRP rehabilitation loan funds will not be released until permanent loan conversion;

7. For Projects secured by leasehold security, leases must meet the requirements of UMR section 8316, and both the borrower and the fee owner of the property must execute the Department's form template lease rider without modification. The lease rider amends the lease and must be recorded on the fee estate.

8. Reporting requirements

- a. Sponsor shall annually submit the following reports to the Department:
 1. Schedule of Rental Income providing data on the households occupying the Project, including information on Rents charged, move in dates, household income and size and demographics;
 2. Proposed annual operating budget;
 3. Year-end annual financial report and audit;
 4. Supportive housing annual report, if applicable;
 5. Usage of COSR funds
 6. For the first 10 years subsequent to the recordation of the PRP loan documents, provide a certification that no tax credits, tax-exempt bond funds, or federal grants or loans with interest rates below the applicable federal rate have been used in the Project since the PRP permanent loan closing.
 7. Any other reports required by the Department, including any notices required for compliance with Preservation Notice Law.
- b. Tax credits, private activity bonds, and recycled bonds may not be used in the Project for at least 10 years after the PRP loan is recorded.
- c. Sponsor shall also duly submit to the Department, all information required by the United States Department of the Treasury, which administers the federal funds allocated to PRP.

9. Defaults and cancellations

In the event of a breach or violation by the Sponsor, the Department shall give written notice to the Sponsor specifying the nature of the violation, breach or default and the action needed to cure. If the violation, breach, or default is not cured to the satisfaction of the Department within 15 days of the written notice, the Department may declare a default under the relevant document and may seek legal remedies for the default including the following:

- a. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation, the appointment of a receiver to complete the Project in accordance with PRP requirements, or

the commencement of foreclosure proceedings under the power of sale clause in the deed of trust; and

- b. The Department may seek such other remedies as may be available under the relevant agreement, at law, or in equity.

III. Other state and federal requirements

A. Article XXXIV

Article XXXIV, section 1 of the California Constitution (Article XXXIV) is not applicable to a development that consists of the acquisition, rehabilitation, reconstruction, alterations work, new construction, or any combination thereof, of lodging facilities or dwelling units using moneys appropriated and disbursed pursuant to Chapter 6.6 (commencing with section 50672) of Part 2 of Division 31 of the Health and Safety Code. (Health & Saf. Code, §37001, subd. (h)(3).) As such, Article XXXIV is not applicable to PRP-funded Projects.

B. Prevailing wages

Applicant's contemplated use of PRP funds is subject to California's prevailing wage law (Labor Code, § 1720 et seq.). Applicants are urged to seek professional legal advice about the law's requirements. Prior to disbursing the PRP funds, the Department will require a certification of compliance with California's prevailing wage law, as well as all applicable federal prevailing wage law. The certification must verify that prevailing wages have been or will be paid (if such payment is required by law), and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and all Project Sponsors.

C. Environmental review

Guidance by the United States Department of the Treasury indicates that an environmental review under the National Environmental Policy Act (NEPA) is not required as a result of PRP funding. However, PRP Projects may still be subject to NEPA review if they are also funded by other federal financial assistance programs.

The California Environmental Quality Act (CEQA) is still applicable to any award made under this program.

D. Relocation

Sponsor must comply with all applicable federal, state, and local relocation laws and with MHP Guidelines section 7315. Pursuant to relocation law, a Sponsor must have a relocation plan prior to proceeding with any phase of a Project or other activity that will result in any displacement of persons, businesses, or farm operations. To ensure that displaced persons or entities do not suffer a disproportionate impact as a result of Projects which benefit the public, all notices to vacate and relocation services must be provided to them in accordance with applicable law. In addition, before the PRP Standard Agreement will be executed, Sponsor must have either: (1) a Department-approved relocation plan; or (2) a

Department-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed and approved by the Department. The Department will identify its submittal requirements for these relocation documents in the PRP application materials. Where the Sponsor's activities will or may result in displacement, the Sponsor's development budget shall include enough funds to pay all costs of relocation benefits and assistance. Any modifications to the foregoing process requirements must be approved in advance by the Department in writing.

E. Accessibility and non-discrimination

All Projects must adhere to applicable local, state, and federal accessibility standards and requirements.

Sponsors shall adopt a written non-discrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with program funds made available pursuant to this NOFA.

F. Insurance requirements

The Sponsor shall obtain, and maintain for the term of the loan, hazard, and liability insurance for the Project in accordance with the Department's requirements, including flood insurance, if applicable. The Department must be named as a loss payee or an additional insured on all such policies. HCD must be specifically named on liability endorsement CG 20 26 (07-04) Additional Insured – Designated Person or Organization, or equivalent form. Sponsor must also obtain Builders Risk insurance and sufficient fire insurance during the course of rehabilitation. All such policies must also provide for notice to the Department in the event of any lapse of coverage and in the event of any claim thereunder. Prior to disbursement of the PRP loan, the Sponsor shall provide evidence satisfactory to the Department of compliance with these insurance requirements.

IV. Appeals

A. Basis of appeals

1. Upon receipt of the Department's notice that an application has been determined to be incomplete, ineligible, fails threshold, or has a reduction to the initial point score, Applicants under this NOFA may appeal such decision(s) to the Director of the Department or their designee pursuant to this section.

2. No Applicant shall have the right to appeal a decision of the Department relating to another Applicant's eligibility, award, denial of award, or any other matter related thereto.
3. The appeal process provided herein applies solely to decisions of the Director of the Department or their designee made pursuant to this NOFA and does not apply to any decisions to be made pursuant to future program NOFAs.

B. Appeal process and deadlines

1. **Process.** To file an appeal, Applicants must submit to the Director of the Department or their designee a written appeal, which sets forth all relevant facts, arguments, and evidence in support of the appeal. Furthermore, the Applicant must provide a detailed reference to the area or areas of the application that provide clarification and substantiation for the basis of the appeal. Appeals are to be submitted to the Department at portfolioreinvestment@hcd.ca.gov.
2. **Filing Deadline.** Appeals must be received by the Department no later than five (5) business days from the date of the Department's written determination regarding the subject application.
3. **Decision.** The requirements of this NOFA and all other applicable law will govern the Department's determination. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department.

V. Award announcements

A. Award announcements

The Department intends to announce awards as individual Projects are approved, but not later than February 15, 2023.

B. Disclosure of application

The application is a public record and is subject to disclosure pursuant to the California Public Records Act (CPRA) (Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code). After final PRP awards have been issued under this NOFA, the Department may disclose any materials provided by the Applicant to any person making a request under the CPRA. The Department cautions Applicants to use discretion in providing information not specifically requested, including, but not limited to, bank account numbers, personal phone numbers, and home addresses. By volunteering such information to the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon request.

VI. Other terms and conditions

A. Conflicts

In the event of any conflict between the terms of this NOFA and applicable state or federal law, the terms of the applicable state or federal law shall control. By submitting a PRP application to the Department, Applicants acknowledge that they

have read and understand all applicable state and federal laws, regulations, and guidelines pertaining to the PRP (PRP Requirements). The Applicant further acknowledges that, if necessary, they had access to independent professional and legal advice to the extent necessary to enable the Applicant to fully comply with PRP Requirements.

B. Right to modify or suspend

The Department reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of this NOFA at any time, including without limitation, the amount of funds available hereunder. If such an action occurs, the Department will notify all interested parties and will post the revisions to the Department's website. Please note that in the event this NOFA is amended, the Department will require new authorizing resolutions from successful Applicants, the borrower, and all constituent entities thereof.

VII. Definitions

Below are the definitions for purposes of PRP:

"Applicant" means the entity or entities applying to the Department for Portfolio Reinvestment Program funding of their qualified Rental Housing Development. Such entity or entities must also be the Sponsor of the qualified Rental Housing Development. Upon receiving an award of Portfolio Reinvestment Program funds, the Applicant or co-Applicants will, both individually and collectively, be referred to as the "Sponsor" for purposes of this NOFA. For projects involving ownership transfers, the Applicant shall be the acquiring party.

"Area Median Income" or "AMI" means the most recent applicable county median family income, adjusted by household size, published by the Department for the Multifamily Housing Program.

"AMI-Based Rents and Incomes" means that Rents and Income limits will be established according to the Rents and Incomes limits published annually by the Department for the Multifamily Housing Program and posted on its website at this link: <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>

"Assisted Unit" means a Unit that is subject to the PRP Rent and occupancy restrictions as a result of the financial assistance provided by PRP, as specified in the PRP regulatory agreement.

"Certified Access Specialist" or "CASp" is a professional who has passed an examination and has been certified by the State of California to have specialized knowledge of the applicability of state and federal construction-related accessibility standards. The Department of General Services maintains a list of CASps at: <https://www.dgs.ca.gov/casp>.

“COSR Agreement” or “COSRA” means an agreement governing the terms and conditions of the annual disbursement of the capitalized operating subsidy reserve as described in this NOFA.

“Department” or “HCD” means the California Department of Housing and Community Development.

“Existing Tenants” means a household/tenant residing in the Project on the date that the PRP application is received by the Department and that application was used to award PRP funds.

“Original HCD Loan” means the HCD funded loan(s) that initially provided financial assistance to the Project.

“HCD Portfolio Projects” means Department-funded Projects for which the Department is a beneficiary of a loan secured by a deed of trust, for the repayment under a promissory note, and for performance under a regulatory agreement.

“Project” or “Rental Housing Development” means the same as defined in HSC, section 50675.2(d), which describes it as, “a structure or set of structures with common financing, ownership, and management, and which collectively contain five or more dwelling units, including efficiency units.” In addition, Rental Housing Development also means group homes with five or more bedrooms.

“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 California Tax Credit Allocation Committee (TCAC) Regulations. For units assisted under the U.S. Department of Housing and Urban Development (HUD) Section 8 or similar rental subsidy program, Rent includes only the tenant contribution portion of the contract rent.

“Sponsor” or “Eligible Sponsor” means the same as set forth in subsection II(B)(1) of this NOFA.