

**MULTIFAMILY HOUSING PROGRAM GUIDELINES**  
8/28/00

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## Article 1. General

### Section 100. Purpose and Scope.

- (a) These Guidelines 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 Guidelines establish terms, conditions and procedures for the award and disbursement of funds allocated to the Multifamily Housing Program.

### Section 101. 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 recited above, the following definitions prevail for the purposes of these Guidelines. References to code sections refer to the sections of these Guidelines unless otherwise noted:

- (a) "Affordable rents" means rents established for assisted units in accordance with section 113.
- (b) "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.
- (c) "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.
- (d) "Department" means the Department of Housing and Community Development.
- (e) "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 (a) of section 38010 of the Health and Safety 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.

- (f) "Distributions" means the amount of cash or other benefits received from the operation of the rental housing development and available to be distributed pursuant to section 114 to the sponsor or any party having a beneficial interest in the sponsor entity 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: debt service, voluntary loan prepayments, 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 fee (except as provided in section 114(a)(1)), asset management fees, guarantee fees, and similar compensation provided to the sponsor or any party having a beneficial interest in the sponsor entity or the project shall be paid from distributions or from sources other than operating income.
- (g) "Eligible households" means households whose incomes do not exceed the income limits specified by TCAC or such lower limit as may be agreed to by a project sponsor and the department. Household income will be calculated in accordance with TCAC rules and procedures.
- (h) "Fiscal integrity" means that the total of 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, (4) maintain a debt service coverage ratio, where specified in the Regulatory Agreement, and (5) pay other extraordinary costs permitted by the Regulatory Agreement. The ability to pay any or all of the annual permitted distribution shall not be considered in determining fiscal integrity.
- (i) "Fund" means the Housing Rehabilitation Loan Fund established pursuant to section 50661.
- (j) "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.
- (k) "Nonprofit corporation" means the same as defined in section 50091 of the Health and Safety Code.

- (l) "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, and licenses, but not including debt service, required reserve account deposits or costs of supportive services.
- (m) "Operating income" means all income generated in connection with operation of the rental housing development including rental income for assisted and nonassisted 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.
- (n) "Program" means the Multifamily Housing Program.
- (o) "Project" means a rental housing development; 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.
- (p) "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.
- (q) "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.
- (r) "Rent" means all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an assisted unit. For units assisted under the federal Section 8 or similar rent subsidy program, rent includes only the tenant contribution portion of the contract rent.
- (s) "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 rented to its first tenant.
- (t) "Rental housing development" means a structure or set of structures with common financing, ownership, and management, and which collectively contains five or more dwelling units, including efficiency units, transitional housing developments and residential hotels. A bedroom in a single family home shall not be considered a dwelling unit.

- (u) "Residential hotel" means any building, which contains six or more residential hotel units where a majority of the units are residential hotel units.
- (v) "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 Title 4 California Code of Regulations Section 10325(g)(3).
- (w) "Rural area" means the same as defined in section 50199.21 of the Health and Safety Code.
- (x) "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, or other specific groups with unique housing needs as determined by the Department. "Special needs populations" do not include seniors or the elderly unless they otherwise qualify as a special needs population.
- (y) "State median income" means the most recent total median family income for California issued by the federal Department of Housing and Urban Development.
- (z) "Substantial rehabilitation" means a rehabilitation project where the contract for rehabilitation work equals or exceeds \$25,000 per unit.
- (aa) "TCAC" means the California Tax Credit Allocation Committee.
- (bb) "Transitional housing" means a rental housing development operating under programmatic constraints that require the termination of assistance after specified time or event, in no case less than six months after initial occupancy, and the rerenting of the assisted unit to another eligible participant.

## Article 2. Program Requirements

### Section 102. Eligible Project.

- (a) To be eligible for funding, a proposed project must involve one of the following:
  - (1) the development and construction of a new rental housing development;
  - (2) the rehabilitation, or acquisition and rehabilitation, of a rental housing development; or
  - (3) the conversion of a nonresidential structure to a rental housing development.
- (b) Proposed projects are eligible only if :
  - (1) other development funding sources are insufficient to cover project development costs, exclusive of developer fees and capitalized rent subsidy reserves; and
  - (2) the construction or rehabilitation work has not been completed as evidenced by the lack of a Notice of Completion.
- (c) 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 if the number of assisted units in the new project is at least equal to the total number of units in the demolished structures; and
  - (2) the sponsor complies with the relocation requirements set forth in section 116.

Section 103. 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 subdivision (c).
- (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, developing, constructing, and operating affordable rental housing through the following:
  - (A) successful prior ownership, development, construction and operation of affordable rental housing; or
  - (B) employment of a staff with demonstrated experience owning, developing, constructing and operating affordable rental housing; and
- (2) have site control of the proposed project property by one of the following, 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) a land sales contract, or other enforceable agreement for the acquisition of the property.

#### Section 104. 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. The department may specify in the notice of funding availability the means and method of determining necessity and the lowest reasonable cost consistent with a project's scope and area.

- (b) Eligible categories of costs include the following:
- (1) property acquisition.
  - (2) refinancing of existing long-term debt to be allowed 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) offsite improvements, such as sewers, utilities and streets, directly related to and required by the rental housing development;
  - (6) onsite 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 property manager, child care facilities, and after-school care and social service facilities integrally linked to the assisted units;
  - (9) a reasonable developer fee subject to the provisions of section 115;
  - (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 104A;
  - (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 paragraph 8 above, no program funds shall be used for costs associated exclusively with nonassisted units or commercial space. If only a portion of the rental housing development consists of assisted units, the program loan amount shall not exceed the sum of the following:
- (1) the costs of all items specified in subdivision (b) of this section associated exclusively with the assisted 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 assisted 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 assisted units, nonassisted units, or commercial space. This share shall be in direct proportion to the ratio between
    - (A) the gross floor area of the assisted 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 assisted units and the gross floor area of all units; and
    - (B) the total gross floor area of the structure or structures.

## Section 104A. Capitalized Operating Reserves

- (a) Program funds may be used to capitalize reserves for the following purposes:
  - (1) to defray potential operating shortfalls arising from unforeseen circumstances;
  - (2) to defray operating shortfalls projected as the result of income and expense trending assumptions used to analyze project cash flow for the first 15 years of project operations in accordance with TCAC requirements;
  - (3) to transition projects dependent upon Section 8 or other similar subsidy program to operation without such subsidy program, in event that assistance is no longer available under the subsidy program; and
  - (4) for rent subsidies for units reserved for occupancy by households meeting the income restrictions described in subparagraph 121(b)(1)(C).
- (b) Where program funds are used to capitalize rent subsidy reserves, 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 reduce rents for a period of 15 years. The department shall hold funds set-aside for this purpose, and disburse them to the project sponsor in annual installments, payable in advance. Sponsors shall use these funds to reduce rents by a flat amount, without regard to the exact incomes of individual tenant households.
- (c) In calculating the amount of funds necessary to set aside to capitalize a rent subsidy reserve, the department shall assume that the units to be subsidized will support no debt service, except for
  - (1) the required annual .42 percent 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 this loan does not exceed three percent.

- (d) Where program funds are used to capitalize rent subsidy reserves, the regulatory agreement shall provide for tenant protections upon termination of the subsidy.

Section 105. Type and Term of Loan.

- (a) Program funds shall be used for post-construction, permanent financing only.
- (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 ten-year extension of the loan term if the department determines both of the following are met:
  - (1) The sponsor is in compliance with the regulatory 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 this 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 Affordable Housing Program administered by the Federal Home Loan Bank provided that the department may subordinate to such loans having a principal amount equal to or greater than twice the amount of the program loan .

Section 106. Maximum Loan Amounts.

- (a) The loan amount shall not exceed the total amount of eligible costs required, when considered with other available financing and assistance, in order to achieve all of the following:
  - (1) to enable the acquisition, development and construction or rehabilitation of the rental housing development;
  - (2) to ensure that rents for assisted units are in accordance with program requirements;

- (3) to operate in compliance with all other program requirements.
- (b) For projects that have unsuccessfully applied for 9% tax credits, and are now proposed to use 4% tax credits, the loan amount is further limited to the sum of:
    - (1) the amount required to fill two-thirds of the funding gap attributable to assisted units created by converting from 9% to 4% credits; plus
    - (2) for up to 30 percent of the assisted units restricted to one of the income levels described in section 121(b)(1), an amount sufficient to reduce rents for these units from the levels proposed in the applicants' application to TCAC for 9% credits (and not exceeding 30% of 50% of area median income) to 30% of 40% of state median income (for high income areas, as enumerated in section 121) or 30% of 35% of state median income (for other areas).
  - (c) For other project types, the loan amount is further limited to the sum of the following:
    - (1) \$15,000 per assisted unit, plus
    - (2) The amount per assisted 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 conventional debt, and using a calculation method established by the department.
  - (d) The program loan shall not exceed \$4.5 million per project.

#### Section 107. Interest Rate and Loan Repayments.

- (a) Loans shall bear simple interest of three percent 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 thirty 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 thirtieth

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 the project for compliance with the requirements of the program.

- (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 114.
- (d) All program loan payments shall be applied first to interest and second to principal.
- (e) The total amount of the 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 ten years.

#### Section 108. Appraisal and Market Study Requirements.

- (a) As a condition of funding, the department may require an appraisal or market study, or both, where required to achieve the following objectives:
  - (1) To 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 104.
  - (2) To assist with establishing reasonable costs for other development cost categories pursuant to section 104.
  - (3) To assess fiscal integrity.
  - (4) To be assured of 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 appraise income property competently;
  - (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible appraisal; and
  - (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.
- (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 market study for rental property competently;
  - (2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible market study; and
  - (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 value and condition of the property.

Section 109. RESERVED FOR FUTURE USE.

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Section 111. Unit Standards.

- (a) Assisted units shall not differ substantially in size or amenity level from nonassisted 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 nonassisted 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 nonassisted, 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.

Section 112. Tenancy Standards.

- (a) Sponsors shall select only eligible households as tenants of assisted units, and shall annually verify household income and size to determine continued eligibility. As part of the management plan required by section 126, the sponsor shall develop a tenant selection plan for assisted units which 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 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 laws governing discrimination, or any other arbitrary factor;
  - (2) prohibition of local residency requirements;
  - (3) tenant selection procedures that include the following requirements:
    - (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, and the approximate date when a unit may be available;
    - (C) notification of tenant applicants of ineligibility to occupy an assisted unit and the reason for the ineligibility and their right to appeal this determination pursuant to subdivision (c) of this section 112;
    - (D) maintenance of a waiting list of eligible households applying to occupy assisted units and units designated for various tenant income levels which shall be made available to prospective tenants upon request; and

- (E) provisions for targeting specific special needs populations in accordance with the regulatory agreement and applicable laws.
- (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) Flexibility for assignment by a sponsor to a different sized unit is permitted 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, the tenant's household size has changed and no longer meets the occupancy standards pursuant to this subdivision, tenant household shall be required to move to the next available appropriately sized unit pursuant to this subdivision.
- (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;
  - (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 three-day notice period;
- (C) material failure by the tenant to carry out obligations under state or local law; or
  - (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;
  - (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 and 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 126 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 such 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, the 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 paragraph 121(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 percent of state median income, but remains below the lower-income limit, 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 program regulatory agreement is achieved.

- (2) if the household's income exceeds the lower-income limit, the sponsor shall designate the next available 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.

### Section 113. Rent Standards.

The department shall establish initial rents for assisted units in each project in accordance with the following:

- (a) At the time of the initial occupancy of an assisted unit, rent shall be charged in an amount not to exceed the maximum amount allowed by TCAC for the appropriate unit type and household size, tenant income category and area in which the unit is located. Utility allowances shall be determined and applied in accordance with TCAC regulations.
- (b) Rents will be further restricted in accordance with rent and income limits submitted by the sponsor in its application for the program loan and approved by the department. Rents shall not exceed 30% of the applicable income eligibility level.
- (c) After the initial operating year, 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 TCAC regulations and procedures provided that the annual increase rate shall not exceed 150 percent of the annual change rate for 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.

Section 114. Limits on Distributions.

- (a) A sponsor shall be limited to an annual distribution in an amount not to exceed the sum of:
  - (1) The greater of: (A) four hundred eighty dollars (\$480) for each assisted unit in the project, said amount to be adjusted for inflation for each year following the year 2000 in accordance with change in 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<sup>1</sup>; or (B) the amount needed for the payment of the minimum deferred developer fees necessary to attain the tax credit threshold basis limit; plus
  - (2) Thirty percent of the amount of cash flow remaining after payment of all debt service, operating expenses, required reserves and the amount of distributions permitted by (a)(1) above.
- (b) Cash flow remaining after payment of distributions shall be applied toward payment 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 agency financing also require payments from remaining cash flow, the department may agree to share the remaining cash flow with the public agency in amounts proportional to the respective loan amounts.
- (c) A sponsor may not accumulate distributions from year to year. A sponsor may deposit all or a portion of the amount permitted for distributions into a project account for distribution in subsequent years. Such 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

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<sup>1</sup> 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 index.

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 128 and the Regulatory Agreement.
- (e) Distributions attributed to income from commercial space and nonassisted units shall not be subject to limits pursuant to this section.

#### Section 115. Limits on Development Costs.

- (a) 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 \$700,000 or the amounts calculated in accordance with the schedule below. Deferred developer fees may be paid from cash flow pursuant to the definition of “distributions” and section 114.
  - (1) New construction and substantial rehabilitation projects:  
  
For the first 10 units, \$15,000 per unit.  
  
For the next 20 units, \$10,000 per unit.  
  
For units over 30, \$5,000 per unit.
  - (2) 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 unit:  
  
For the first 10 units, \$9,000 per unit.  
  
For the next 20 units, \$6,000 per unit.

For units over 30, \$3,000 per unit.

- (3) For all other projects, \$2,000 per unit.
  - (4) Net fees shall be calculated by subtracting contributions of funds or real property made towards project development costs by the sponsor or an affiliate from the total of all fees paid to the sponsor or affiliate.
- (b) Except where required to secure local government approvals essential to completion of the project, or except 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;
  - (3) shake and tile roofs, 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.
- (c) Builder overhead, profit and general requirements shall be limited in accordance with the limitations specified in Title 4 California Code of Regulations Section 10327.
- (d) 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.

#### Section 116. 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 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 in occupancy in a property who are permanently displaced as a direct result of the development of the project shall be entitled to relocation benefits and assistance as provided in applicable provisions of the Government Code and subchapter 1 of chapter 6 of Title 25 of the California Code of Regulations, commencing at section 6000. Displaced tenants who are not 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 Title 25 California Code of Regulations section 6038. The relocation plan shall be subject to the review and approval of the department prior to the disbursement of program funds.
- (d) All eligible households who are permanently or 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 112.
- (e) All ineligible households who are permanently or 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 nonassisted units for which they qualify.
- (f) Notwithstanding the preceding subdivisions, tenants who are notified in writing prior to their occupancy of an existing unit that such 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.

#### Section 117. 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 shall be 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 which specifies a total contract price consistent with the project budget approved by the department.

### Article 3. Application Procedures

#### Section 118. 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, 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 applications for projects for which the department has issued, or concurrently will issue, a special NOFA pursuant to paragraph (4) of subsection (c) of this section 118.
- (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 that shall constitute 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 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. Such measures may include, but are not limited to:

- (1) Issuing a special NOFA for designated project types.
- (2) Awarding bonus points to designated project types within a particular NOFA.
- (3) Reserving a portion of funds in the NOFA for designated project types.
- (4) Notwithstanding anything in these Guidelines to the contrary, a special NOFA issued pursuant to this subsection may establish an over-the-counter application process. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with subdivision (a) of section 121, and shall establish minimum funding threshold criteria based on the rating criteria set forth in subdivision (c) of section 121.

#### Section 119. Application Requirements.

- (a) Application shall be made on a form provided by the department.
- (b) An application shall be deemed complete when the application form is complete, and the department is able to assess the proposed project's feasibility pursuant to section 120 and to determine from the information provided whether the project is eligible for rating and ranking pursuant to the requirements of section 121.

#### Section 120. Project Feasibility.

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

- (a) Vacancy rates for non-special needs residential units shall be 5%, unless compelling market evidence supports a lower figure. Vacancy rates for special needs residential units shall be 10% unless compelling market evidence supports a different figure.
- (b) Vacancy rates for commercial space shall be 50%, unless compelling market evidence supports a lower figure.

- (c) Total operating expenses (not including property taxes) shall not be less than those specifically listed in Title 4 California Code of Regulations Section 10327 as minimum operating expenses. The department may underwrite with higher 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.
- (d) The first year debt service coverage ratio shall not be less than 1:10.
- (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 trended for 15 years in accordance with the assumptions set forth in Title 4 California Code of Regulations Section 10327.
- (g) Property management fees shall be within the normal market range.
- (h) For new construction or conversion projects, annual deposits to the replacement reserve account shall be in the amount of at least six tenths of one percent (.06) of construction contract costs, excluding the cost of underground garages and cost overruns. For the determination of feasibility of rehabilitation projects at the application stage annual deposits to the replacement reserve account shall be set in the amount of at least \$400 per unit per year. Prior to funding, these reserve requirements may be modified by the department based on other available reserves or, in the case of a rehabilitation project, a third-party physical needs assessment acceptable to the department.

#### Section 121. 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 103;
  - (2) The project involves an eligible project pursuant to section 102;
  - (3) All proposed uses of program funds are eligible pursuant to section 104;
  - (4) The application is complete pursuant to section 119;

- (5) The project will maintain fiscal integrity consistent with proposed rents in the assisted units and is feasible pursuant to section 120;
  - (6) The project site is free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove, 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 subdivision (a) of this section 121, and shall be rated and ranked in accordance with the criteria set forth in this subdivision. Applications shall be ranked based on their point scores, with applications scoring higher receiving a higher ranking. Point scores shall be rounded to the nearest hundredth of a point. The department may establish a preliminary point score and ranking for applications prior to making a determination of compliance with subdivision (a). 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 subdivision (a) of this section 121. Additional or alternative scoring may be implemented in particular NOFAs for designated project types as described above in subdivision (c) of section 118.

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 assisted units restricted to various percentages of the state median income, adjusted by household size, and in accordance with the following schedules:

High Income Areas

(Counties where area median income exceeds 110% of the state median income: Alameda, Contra Costa, Marin, Orange, San Francisco, San Mateo, Santa Clara, Santa Cruz and Ventura).

- (A) .75 points will be awarded for each percent of assisted units that are assisted 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 assisted units that are assisted 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 assisted units that are assisted units for households with incomes not exceeding 20% of state median income (adjusted to avoid exclusion of working CalWORKs recipients and individuals receiving SSI in accordance with a chart published by the department) for the first 10% of assisted units; then 1 point for each subsequent percent of total assisted units.

Other Areas

- (D) .75 points will be awarded for each percent of assisted units that are assisted 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 assisted units that are assisted 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 assisted units that are assisted units for households with incomes not exceeding 20% of state median income (adjusted to avoid exclusion of working CalWORKs recipients and individuals receiving SSI in accordance with a chart published by the department) for the first 10% of total assisted units; then 1 point for each subsequent percent of total assisted units.

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

Five points will be awarded based on the receipt of 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.

Ten points will be based on the vacancy rate of units in competitive developments similar to units in the project. For purposes of the following vacancy rate comparisons, units reserved for special needs populations in the proposed project and comparative projects shall not be considered.

- (A) 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.
- (B) Units similar to those in the project are defined as units with the same number of bedrooms, and with tenant-paid rents not exceeding 115% of the highest rent levels for same-sized units in the project.
- (C) To receive the full 10 points:
  - (i) the overall vacancy rate must be 3% or less for similar units with project based Section 8 (or similar rent subsidy funding) in the three (3) most closely comparable competitive developments located within three miles of the project. (If there are fewer than three competitive developments within a three mile radius, the overall vacancy rate for similar units in the three nearest developments with project based Section 8 or similar must be 3% or less.) and
  - (ii) the overall vacancy rate for similar units in the five (5) most closely comparable competitive developments without project

based Section 8 (or similar rent subsidy) located within one mile of the project must be less than 5 percent. If there are fewer than five (5) competitive developments located within one mile of the project, then the nearest three (3) competitive developments shall be considered.

(D) Projects located in areas exempt from TCAC's market study requirements, or where more than 70 percent of the units are reserved for special needs populations, shall receive 10 points, without consideration of the vacancy rates of competitive developments.

(3) **The development and ownership experience of the project sponsor—20 points maximum.**

Applications will be scored based on the number of subsidized multifamily rental projects (including tax credit projects) with 10 or more units that the sponsor has completed over the last five years, the date they completed their first such project, and whether they have identified performance problems. A sponsor may include the experience of its principals or related entities.

(A) 3 points will be awarded for each project completed in the 5 years preceding the application due date set forth in each NOFA, up to a maximum of 15 points. Projects will be counted if the sponsor or an affiliate is the owner or the managing general partner of the owner.

(B) One point will be awarded for each full year elapsed between the application due date and the date the applicant's first project was successfully completed and occupied,- up to a maximum of 5 points.

(C) Up to 10 points will be deducted for each of the following:

(i) Removal or withdrawal under threat of removal as general partner.

(ii) Repeated failure to submit when due compliance documentation required under department programs.

- (iii) Use of reserve funds for department-assisted projects in a manner contrary to program requirements.
- (iv) Failure to provide promised supportive services to residents of a special needs project.
- (v) Other significant violations of the requirements of department programs or of the programs of other public agencies.

Events occurring more than three years prior to the application due date and resolved to the department's satisfaction shall not be used as the basis for point deductions.

(4) **The percentage of units for families or special needs populations – 35 points maximum.**

Applications will be scored based on the percentage of project units that will have two 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 units.

- (A) .2 points will be awarded for each percent of total project units that have two bedrooms.
- (B) .7 points will be awarded for each percent of total project units that have three 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

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

Applications will be scored based on the amount of non-MHP funds for permanent funding of the development costs attributable to the assisted units as a percentage of the requested amount of MHP funds. One point will be awarded for every 10% increment above 150%. For example, a project where other funds are equal to 150% of requested MHP 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-MHP funds equal 400% of requested MHP funds will receive the maximum 20 points.

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

(A) 15 points will be awarded to applications that:

- (i) have an enforceable commitment for all construction financing as evidenced by executed commitments and payment of commitment fees;
- (ii) provide evidence, as verified by the appropriate officials, of site plan approval and that all necessary environmental clearance (CEQA and NEPA) as either finally approved or unnecessary;
- (iii) have all necessary public approvals except building permits;
- (iv) provide evidence that the exact legal parcel on which the project is or will be located currently exists without the need for any further government approvals;
- (v) have design review approval;
- (vi) have all deferred-payment financing, grants and subsidies committed, in accordance with TCAC requirements and with the same exceptions as allowed by TCAC; and
- (vii) do not require a future allocation of 9% tax credits for project feasibility.

(B) 10 points will be awarded to applications that:

- (i) have an enforceable commitment for all construction financing (not including tax-exempt bonds and 4% tax credits);
- (ii) have all deferred-payment financing, grants and subsidies committed, in accordance with TCAC requirements and with the same exceptions as allowed by TCAC;



- (iii) do not require a future allocation of 9% tax credits for project feasibility; and
  - (iv) have received any required local site plan or environmental approvals, and not require a future zoning change.
- (C) All other applications will be awarded 0 points.

#### Article 4. Program Operations

##### Section 122. 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 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) provisions governing the amount and terms of the loan;
  - (3) provisions regarding 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.
  - (15) other provisions necessary to ensure compliance with the requirements of this program.
- (b) The department shall enter into a regulatory agreement with the sponsor for not less than the original term of the loan which shall be recorded against the project property prior to the disbursement of funds. The regulatory agreement shall include the following:
- (1) designation of the number, type and income level of assisted units pursuant to section 111;
  - (2) standards for tenant selection pursuant to section 112;
  - (3) provisions regulating the terms of the rental agreement pursuant to section 112;
  - (4) provisions related to an annual operating budget approved by the department pursuant to section 128;
  - (5) provisions related to a management plan pursuant to section 126;
  - (6) provisions related to a rent schedule, including initial rent levels for assisted and nonassisted units pursuant to subdivisions (a) and (b) of section 113;

- (7) conditions and procedures for permitting rent increases pursuant to subdivision (c) of section 113;
  - (8) provisions for limitations on distributions pursuant to section 114;
  - (9) provisions relating to annual reports, inspections and independent audits pursuant to section 127;
  - (10) provisions regarding the deposit and withdrawal of funds to and from reserve accounts;
  - (11) assurances 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 126;
  - (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 nonassisted 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 124;
  - (17) for projects serving special needs populations, provisions regarding the implementation and maintenance of services and facilities for the targeted special needs group; 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.

Section 123. RESERVED FOR FUTURE USE.

Section 124. 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 this 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 successors 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; except that it may transfer limited partnership interests without the prior written approval of the department.
- (c) The department shall grant its approval of such 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 shall 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;
  - (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.

#### Section 125. 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 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 amount 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 complete the project or 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) In the event that 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 affected households. In any action to enforce the provisions of the Regulatory Agreement, the department may seek as additional remedy, the repayment of such overcharges.
- (c) Loan commitments may be canceled by the department 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;
  - (4) there has been a material change in the principals or management of the sponsor or project, which was change not approved by the department.

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 subdivision.

- (d) Upon receipt of a notice of intent to cancel the loan from the department, the sponsor shall have the right to appeal to the Director.
- (e) The department may use amounts available in the fund for the purpose of curing, or avoiding, a sponsor's defaults on the terms of any loan or other obligation that jeopardizes completion of construction or rehabilitation, the fiscal integrity of a project or the department's security in the project. Such defaults include defaults or impending defaults in payments on mortgages, failures to pay taxes, or failures to maintain insurance or required operating reserves. The payment or advance of funds by the department pursuant to this subdivision 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 so advanced shall be part of the program loan to the sponsor and, upon demand, due and payable to the department. Where it becomes necessary to use the fund for the purpose of assisting 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 similar occurrences and insure compliance with the terms of the applicable agreements.

Section 126. 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 assisted 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 thirty 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 decertifying household income and size;
  - (5) plans for carrying out an effective maintenance and repair program;
  - (6) rent collection policies and procedures;
  - (7) program for maintaining adequate accounting records and handling necessary forms and vouchers;

- (8) plans for enhancing tenant-management relations;
- (9) management agreement, if any;
- (10) provisions for periodic update of management plan;
- (11) appeal and grievance procedures; and
- (12) plans for collections for tenant-caused damages; plans for processing evictions and termination; and
- (13) for projects serving special needs populations, a supportive services plan, that includes: a description of the services to be provided; a preliminary services budget; funding source(s); identification of the organization(s) that will provide services; a preliminary staffing plan; location of services to be provided off site; and any special eligibility requirements for the services.

#### Section 127. 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 in accordance with department audit requirements by a certified public accountant. 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.

#### Section 128. Operating Budget.

- (a) Prior to loan closing, the sponsor shall provide the department an initial operating budget for its approval. 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 a proposed operating budget for its approval sixty days prior to the end of each project fiscal year. 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 113. 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 and proposed management fees and reserve deposit amounts. The department may reimpose 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:
  - (1) A replacement reserve account for capital improvements such as replacing structural elements, furniture, fixtures, or equipment of the rental housing development which are reasonably required to preserve the project; and
  - (2) an operating reserve account in an amount sufficient to offset potential operating shortfalls.
- (e) For projects with nonassisted units or commercial space, all budgets submitted pursuant to this section shall show income and uses of income allocated among assisted units, nonassisted 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.