

Proposed Changes to the 2019 MHP Guidelines and Statement of Reasons

DRAFT 6/18/2021

The Department of Housing and Community Development (Department) invites comments on proposed amendments to the Multifamily Housing Program (MHP) Guidelines (Guidelines), as set forth in their entirety in the attached strike-out draft. These amendments would modify the guidelines that went into effect June 19, 2019 and governed the first four Proposition 1 funding rounds. When final, these changes will become effective with MHP's fifth Proposition 1 funding round and in conjunction with the implementation of the Assembly Bill (AB) 434 "Super NOFA" process scheduled for release in February 2022.

Comments may be submitted in writing using the form provided at MHP@hcd.ca.gov. Please include the section and subsection number applicable to each comment and do not submit multiple comments in a single response. Also include the commenter's name, organization, and contact information.

On April 17, 2020, the Department published the then-proposed 2020 Proposed Amendments to the MHP Guidelines. After closing of the public comment period on May 5, 2020, it became clear that additional stakeholder engagement was needed to fully address the concerns of stakeholders regarding the changes included in the proposed amendments, as well as many issues and concerns that were not included.

Throughout June, July, and August 2020, the Department conducted seven robust stakeholder sessions, including sessions targeted toward northern & southern urban areas, rural areas, special needs advocacy groups and tribal entities. Where warranted, the Department conducted additional outreach to a broad range of consultants and experts.

Following passage of Assembly Bill 434 in September 2020 and in consideration of substantial changes to California Debt Limit Allocation Committee (CDLAC) Regulations, the Department has undertaken additional, extensive stakeholder and inter-agency collaboration with three primary goals: 1) responding to stakeholder concerns and recommendations; 2) compatibility with California Tax Credit Allocation Committee (TCAC) and CDLAC regulations; and 3) alignment with other AB 434 programs.

In consideration of these goals and policy objectives including affordability, equity and affirmatively furthering fair housing opportunities, an internal cross-divisional working group proposes these changes to the 2019 MHP Guidelines. Based upon the recommendations and feedback received, the Department believes the current Guidelines need both minor adjustments and substantive changes as summarized below:

- Addition and/or revision of definitions.
- For projects establishing eligibility as Special Needs housing, increasing the eligibility requirement to a minimum of 45 percent Special Needs Units subject to Department regulation, consistent with TCAC minimum, and minimum experience requirements for lead service providers, project sponsors and management agents.

- Eliminating Supportive Housing, as a project type, to better align with TCAC project types. Chronically homeless with a disability (previously “Supportive Housing”) is now included as Special Needs.
- Eliminating “Agricultural Workers” as a Special Needs population and adding Farmworker Housing as a project type to better align with Joe Serna, Jr. Farmworker Housing Grant (FWHG) Program requirements and TCAC Farmworker state credit program. This change eliminates the requirement for service plans for this population.
- Elimination of the current prohibition on use of multiple Department Funding Sources to assist the same Units.
- Specifying the existing Uniform Multifamily Regulations (UMR) requirement to maximize the number of Assisted Units to the extent allowed under Article XXXIV.
- Addition of alternative method for Tribal Entities and BIPOC Developers to meet minimum development experience requirements, consistent with TCAC.
- Eliminating health care facilities as an eligible use of MHP funds.
- Providing clarification of eligible use of funds for out-patient services integrally linked to the tenant population.
- Addition of an exception to loan term and recordation requirements for projects developed in Indian country.
- Addition of state and federal law requirements.
- Addition of set-asides for highest scoring Tribal Entity applications.
- Addition of ground lease requirements for projects in Indian country.
- Addition of minimum service amenities, consistent with CDLAC and TCAC.
- Elimination of Leverage scoring criteria.
- Addition of Cost-Savings scoring criteria.
- In scoring experience, clarification of requirements for documenting experience of Sponsor’s principal.
- Revisions to scoring of development experience and addition of scoring for ownership & management of affordable housing projects. .
- Clarification and revision of readiness scoring criteria.
- Revisions to the tiebreaker scoring factors and methodology, to include affordability, leverage (including Opportunity Area boost), and serving homeless populations.

- Establishing a policy on use of refinance loan proceeds; and
- Differentiating supportive service requirements for projects serving tenants needing more intensive services from those needing lesser levels of services and aligning these requirements with those of other Department programs.
- Addition of cross-default provisions.
- Increased Developer Fee limit for non-tax credit projects.

The most substantive 2021 Guideline changes, including the Department’s rationale and proposed text are detailed below. The complete Draft Guidelines in strike-out version follow.

Section 7301: Definition Revisions.

Definitions of Article XXXIV, Assisted Unit and Eligible Household have been revised for clarity and readability.

“Rental Housing Development” revised to specifically exclude “health facilities” as defined by Section 1250 of the Health and Safety Code (HSC) or any in-patient “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the HSC. (See also revision to Section 7304 which clarifies use of MHP funds for integrally linked community health services).

Definitions of Joint Venture, Transitional Housing, and Indian country, Tribe and Tribal Entity revised or added for clarity.

Definition of “BIPOC” and “BIPOC Project” criteria added.

Proposed Text:

- (g) “BIPOC” means Black, Indigenous, and Other People of Color. To be considered a qualifying BIPOC non-profit organization requires having a BIPOC Executive Director/Chief Executive Officer and 51% of the organization’s board must be BIPOC. For purposes of this paragraph, People of Color means “a person who checked the Black or African American, American Indian and Alaska Native, Asian, or Native Hawaiian and Other Pacific Islanders race category or who answered yes to the Hispanic Origin question on the 2020 United States Census or, if that data is not yet publicly available, the 2010 United States Census.”
- (h) “BIPOC Project” means a Qualified Residential Rental Project for which the sponsor entity is a BIPOC. A BIPOC Project may be a New Construction Project, Rural project, Preservation Project, or Other Rehabilitation Project. A BIPOC Project does not include a project for which the qualifying sponsor or sponsor entity is eligible to receive maximum General Partner Experience points pursuant to Section 10325(c) (1) (A) of the CTCAC regulations unless those points are awarded to a principle of the BIPOC who no longer is employed by the developer of, or has an ownership interest in, the project(s) which form the basis of the experience points.

- (w) “Indian Country” refers to land located in Indian country as defined by 18 USC 1151.
- (z) “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. A Sponsor formed as a joint venture in accordance Section 7303(a) shall comply with the requirements of Section 7303(d). The Borrower limited partnership is not a joint venture within the meaning of Section 7303(a).
- (ff) “Principal” means employees of the Sponsor who are in a position responsible for the oversight and management of development activities.
- (xx) “Tribal Entity” means a Tribe, or a tribally designated housing entity.
- (yy) “Tribe” means” a federally recognized California Indian Tribe that meets the definition of Indian tribe under Section 4103 of Title 25 of the United State Code.

Section 7302: Eligible Project, Special Needs and Supportive Housing Requirements, and Farmworker Housing:

For defining project types, Supportive Housing has been consolidated with Special Needs and the minimum number of qualifying units increased for consistency with TCAC. Specifies that qualifying Special Needs Units must be limited under (i.e. subject to the terms of) a Department program regulatory agreement regarding occupancy and similar restrictions, sets forth minimum experience requirements for lead service providers, sponsors and management agents in Special Needs projects and specifies increased minimum requirements for projects serving Chronically Homeless with a disability (formerly “Supportive Housing”)

Adds Farmworker Housing as a project type to better align with TCAC and the FWHG program, while eliminating the overly burdensome requirements of a Special Needs project (i.e. LSP, case management and services plans).

Replaced reference to “Units Restricted” with the defined term “Restricted Unit” to avoid confusion.

Rationale

The existing guidelines do not require Special Needs Units to be regulated by the Department. The proposed revisions would ensure that the Department has direct enforcement rights, thus increasing the likelihood that the Special Needs Units will provide appropriate services to the intended target population.

The second revision specifies the minimum level of experience required for Special Needs housing and service providers. Based on experience, the Department believes this is important for project success.

Proposed Text

- (d) The Project qualifies as one or more of the following project types:
- (2) Special Needs, where at least 45 percent of the Restricted Units are limited under Department regulatory agreements to occupancy by Special Needs Populations, and the Project complies with the integration requirements specified in subsection (g) below.
 - (A) The LSP must have at least three years' experience providing services to the specific target population.
 - (B) The Sponsor must have experience owning or operating at least one project with units restricted by a public agency to a Special Needs population: and,
 - (C) The property management agent must have at least one years' experience managing a project with units restricted by a public agency to a Special Needs Population.
 - (4) Farmworker Housing, where at least 25 percent of the Restricted units limited under Department regulatory agreements to occupancy by Agricultural Employees and their households. Farmworker Housing projects shall provide appropriate oral and written linguistic services.
- (e) Additional requirements for Special Needs projects where Restricted Units are limited under Department regulatory agreements to occupancy by chronically homeless with disabilities:

Note: In Section 7302(f) only the introductory paragraph is revised, the criteria remain the same.

Section 7302(d): Use of 9 percent Tax Credits

This prohibition is removed to allow more flexibility in structuring of project finances.

Please refer to revised Section 7307 regarding loan limits for 9 percent projects.

Section 7302(f): Integration

This revision provides clarification that the Department's policy is applicable only to Department Assisted Units restricted to occupancy by disabled persons, as set forth in 7302(f)(3).

Proposed Text

- (f) Special Needs Projects must demonstrate integration of targeted populations with the general public by:
- (1) Physically integrating Department Assisted Units restricted to Special Needs target populations having disabilities, with other units, to the maximum extent feasible and subject to reasonable health and safety requirements, consistent with 24 CFR, Section 8.26.
 - (2) In Projects with more than 20 units, have no more than 49 percent of total units restricted under any “Department Funding Sources”, as defined in Section 7302(i) below, to occupancy by disabled Special Needs Populations. This limitation shall not be interpreted to preclude occupancy of any Project Units by persons with disabilities, or restrictions by other funding sources, including but not limited to TCAC, that result in more than 49 percent of total Project Units being restricted to persons with disabilities. It shall also not apply to projects complying with alternative requirements for demonstrating Olmstead compliance adopted by counties and approved by the Department.
 - (3) Disabled Special Needs Populations include individuals with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals with intellectual disabilities, or developmental disabilities; individuals with serious mental illness; Chronically Homeless; and individuals with chronic illness, including HIV.

Section 7302(g): Requirements for projects proposed by Tribal Entities

This revision sets forth specific requirements for Tribal Entity projects.

Proposed Text

- (g) Projects proposed by Tribal Entities must meet the following requirements:
- (1) Projects satisfy one of the following:
 - (A) Located in Indian country as defined by 18 USC 1151; or
 - (B) Located on fee land.
 - (2) The Applicant meets the following conditions of award funding (which conditions are not, however, conditions to engaging in the competitive award process) as and to the extent set forth in a Standard Agreement.:
 - (A) BIA Consent. The Bureau of Indian Affairs has consented to Applicant’s execution and recordation (as applicable) of all Department-required documents that are subject to 25 CFR sec. 152.34 or 25 CFR sec. 162.12, prior to award disbursement.

- (B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court..
- (C) Title Insurance. The Department has received title insurance for the property underlying the Project that is satisfactory to the Department. Notwithstanding the foregoing sentence, upon a showing of good cause, for Applicants unable to provide a conventional title insurance policy satisfactory to the Department, this condition may be satisfied by a title condition report issued by the BIA Land Title and Records Office and pursuant to a title opinion letter issued for the benefit of the Department but paid for by the Applicant.
- (D) Recordation Requirements. Where recordation of instruments is a condition of award funding or otherwise required under or pursuant to the Standard Agreement, the subject instrument is recorded with the Land Titles and Records Office at the BIA or in the appropriate official records of the County in which the Project property is located, as may be applicable.

Section 7302(h): Multiple Department Funding Sources

This revision eliminates the current prohibition, commonly referred to as the “stacking prohibition” or “subsidy stacking”, which prohibits the use of multiple Department funding sources to assist the same Unit, but adds a limitation on the total number of Department funding sources. Clarifies the number of Assisted Units, required pursuant to UMR 8304(c).

Due to multiple complications which have arisen because of this prohibition, this change has substantial internal and external stakeholder support.

Rationale

“Stacking prohibitions” originated under the Veteran’s Housing and Homelessness Prevention Program (VHHP) and were adopted later by other Department programs created or funded under Propositions 1 and 2. This prohibition was based largely on an assumption that by increasing per Unit loan limits, projects would not need funding from multiple Department sources. In fact, this has not been the case and several years’ experience show that Sponsors must often go to extraordinary lengths to structure projects utilizing multiple Department sources. Most significantly, stakeholders report that in a period of rapidly increasing costs, they face substantial challenges in securing sufficient project funding. The stacking prohibition, further exasperated by the limitations of Article XXXIV and integration requirements, makes structuring of supportive housing and special needs projects especially difficult.

Implications of Article XXXIV: Although all stakeholders expressed concerns about their ability to secure adequate funding, the problems are far more acute in less affluent jurisdictions, which do not have Article XXXIV authority. In these jurisdictions, where no more than 49 percent of the Units may be assisted, projects are often limited to a single source of Department funding and, lacking substantial local funding, may be infeasible. A further complication for MHP is that UMR 8304(c) requires that the total MHP Assisted Units must be equal to the total Restricted Units, to the extent allowed under Article XXXIV. This means that the total MHP Assisted Units must be either 49 percent or 100 percent of the Restricted Units, depending on the extent to which the jurisdiction has Article XXXIV authority. This provision effectively limits any project's Department funding source solely to MHP.

Elimination of the stacking prohibition would improve financing options, especially where jurisdictions do not have Article XXXIV authority, resolves the conflict with UMR 8304(c), ensures MHP regulatory authority to the maximum extent possible, streamlines project financial structuring, as well as underwriting and project monitoring.

There has been some concern that elimination of the stacking prohibition would lead to over-subsidizing of proposed projects. However, this concern is offset and minimized by imposing a limit of no more than two Department funding sources per project, plus up to two Department infrastructure grants.

Since MHP funds Units that are "Restricted" but not "Assisted", the reference in the current Guidelines to "Assisted Units" is incomplete.

Proposed Text

(h) Multiple Department Funding Sources

Use of multiple Department funding sources on the same Assisted Units is permitted, subject to the following limitation:

- (1) No more than two Department Funding Sources plus two infrastructure grants may be used on a single Project.

Infrastructure grants include Affordable Housing Sustainable Communities Housing Related Infrastructure, Transit Oriented Development Infrastructure, or Infill Infrastructure Grant program grants.

- (2) Funding limits set forth in subsection (2) shall not include Department funds awarded for purposes other than capital improvements, such as loans or grants for non-housing related infrastructure, transit amenities, programs, or rental and operating subsidies.

- (3) "Department Funding Sources" shall mean loan or grant funds awarded for permanent funding of development costs (which shall not include funds specifically designated for capitalized operating or operating subsidy reserves) under the following programs:

- (A) Supportive Housing Multifamily Housing program.

- (B) Multifamily Housing Program.
- (C) Veterans Housing and Homelessness Prevention program.
- (D) No Place Like Home Program, including funds awarded either by the Department or an Alternative Process County, but not grants or loans for capitalized operating subsidy reserves.
- (E) Affordable Housing and Sustainable Communities program - Affordable Housing Development loans, but not grants for Housing Related Infrastructure, Sustainable Transportation Infrastructure, Transportation Related amenities, or Program Costs, all as defined in the program guidelines.
- (F) Transit Oriented Development program - rental housing development loans, but not grants for infrastructure.
- (G) Joe Serna, Junior Farmworker Housing Grant program.
- (H) Housing for a Healthy California program, including funds awarded either by the Department or a county, but not grants for operating reserves or rental assistance.
- (I) National Housing Trust Fund Program.

“Department Funding Sources” do not include existing loans or grants under any Department funding source listed above that are at least 14 years old and will be assumed or recast as part of an acquisition and Rehabilitation project.

Section 7302(i): Assisted Unit Requirements

Rationale

The new subsection (i), regarding minimum number and type of Assisted Units, makes it clear that the Department will treat Units not directly regulated by the Department as Restricted Units only when Article XXXIV precludes this regulation. By maximizing the number of directly regulated Units, this provision enhances the ability of the Department to enforce program requirements.

The new subsection also stipulates that Units directly regulated by the Department will be concentrated among those restricted to the lowest income levels, because these are the Units that achieve the policy objectives of the program and because enforcement tools available to other agencies may be limited.

Proposed Text

- (i) Assisted Unit Requirements

- (1) The number of Assisted Units shall equal the number of Restricted Units to the extent allowed by the requirements of Article XXXIV of the California Constitution and UMR Section 8304(c).
- (2) Where multiple Department programs assist the Project, and the jurisdiction does not have Article XXXIV authority, the Department's total regulatory authority shall not exceed 49 percent of the Project's total Units. In jurisdictions having Article XXXIV authority, the Department's total regulatory authority shall not exceed the allocation of authority, up to 100 percent of the Project Units.
- (3) The Units regulated by the Department, including MHP Assisted Units, shall include those with the lowest income limits.

Section 7303: Eligible Sponsor

Adds "Tribal Entity", for clarification and readability.

New subsection (d) expands and clarifies the method by which Sponsor capacity will be evaluated.

Revised subsection (e) allows for transfer of controlling interest among Joint Venture partners after 15 years.

New subsection (f) sets forth documentation requirements when the Sponsor relies on the experience of its principal.

New subsection (g) allows Tribal Entities to contract with experienced developers to satisfy Sponsor experience requirements, consistent with TCAC criteria.

Rationale

The existing Section 7303(c) does not adequately address the evaluation of Sponsor capacity. This revision has been expanded to include past performance of the Sponsor in LIHTC or Department funded projects.

The Department has experienced substantial difficulty in evaluating and confirming the experience reported by the principal of the Sponsor. The Department had considered eliminating the experience of the principle entirely, but stakeholders were strongly opposed to this change. Instead, the Department will continue to allow the experience of the principal if supported by additional documentation, as set forth in the application.

Among Tribal Entities, experience in development of affordable housing is a substantial barrier to qualifying and competing for MHP funding. Pursuant to AB 1010 (2019), the department is authorized to waive or modify program requirements to eliminate or reduce such barriers. This new subsection will allow less-experienced Tribal Entities to contract with experienced developers to qualify for program funding.

Proposed Text

- (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 which meets the requirements of subsection(c), below.
- (b) A Sponsor shall be organized on a for-profit, including limited profit, or nonprofit basis.
- (c) To be eligible for funding, a Sponsor must demonstrate experience relevant to developing and owning affordable rental housing through evidencing current capacity as set forth in the MHP Application and NOFA, and both of the following:
 - (1) Successful prior development and ownership of affordable rental housing.
 - (2) Employment of a staff with demonstrated experience owning and developing affordable rental housing.
- (d) Evaluation of Sponsor capacity will be based upon certifications of the Sponsor at the time of application, demonstrated employment of skilled, knowledgeable staff, including qualified property management, and past performance of LIHTC and/or Department funded projects. As deemed necessary by Program staff, additional information may be requested to determine Sponsor capacity.
- (e) If the Sponsor is a joint venture and qualifies as an eligible Sponsor under the preceding subsections based on the experience of only one joint venture partner, that partner must have a controlling interest in the joint venture and a substantial and continued role, for a minimum of 15 years, in the Project's ongoing operations, as evidenced in the documents governing the joint venture. Transfer of the controlling interest shall be subject to Department approval pursuant to Section 7323.
- (f) 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 and NOFA.
- (g) Tribal Entities and BIPOC Developers may contract with an experienced developer who will not be a general partner to meet the requirements of subsection (c) provided that the contract is fully executed at time of application submission and shall be in effect at least until permanent loan closing and the issuance of 8609 tax forms, if applicable.

Section 7304: Eligible Uses of Funds; Use of MHP Funds for Health Care Facilities

Revised subsection (8) to clarify the types of health facilities that are an eligible use of MHP funds, and specifically prohibit in-patient treatment facilities.

Rationale

To ensure a focus on housing, the Department has traditionally not allowed funding made available under its housing programs to be used for the development of health care facilities as defined by Section 1250 of the HSC. Since it desired to encourage MHP projects to target

populations who are frequent users of health care services, and who often have difficulty accessing these services, this prohibition was relaxed under the initial Proposition 1 MHP guidelines.

However, concerns have now arisen regarding the potential for this change to result in significant amounts of housing funds being diverted to other uses, and regarding how health facilities assisted by the Department would be effectively monitored.

Because some stakeholders have indicated, and the Department agrees, that some level of health care service is desirable or necessary to the targeted population, a better approach is to more clearly define which types of facilities are allowed and which are not.

Proposed Text

Section 7304. Eligible Uses of Funds

(b) Eligible costs include the following:

- (8) Development costs of a residential Unit reserved for an onsite manager, childcare, after-school care, adult daycare, or social service and health amenities integrally linked to, and addressing the needs of the tenants of the Assisted Units.

Health amenities does not include any “health facility” as defined by Section 1250 of the Health and Safety Code (HSC) or any “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the HSC.

Section 7305: Cost Limitations

Revised subdivision (b) due to changes in TCAC regulations.

Proposed Text

(b) The limits on Developer Fee specified in UMR Section 8312 shall apply, except that:

- (1) For non-tax credit projects, the total Developer Fee shall not exceed \$2,200,000. In addition, the Developer Fee paid from development funding sources shall not exceed the per unit limit calculated in accordance with UMR Section 8312(a).
- (2) For projects utilizing four percent tax credits, Developer Fee payments shall not exceed the amount that may be included in project costs pursuant to Title 4 CCR, Section 10327(c)(2)(A); and
- (3) 8312(d) shall not apply.

Section 7306: Type and Term of Loan

Revised Section to add 50-year term and unique recordation requirements for projects developed on Tribal Trust Land.

Rationale

Projects developed in Indian country are subject to unique limitations or requirements imposed by federal or tribal law. AB 1010 (2019) authorizes waiver or modification of program requirements to ensure such laws will not be violated.

Proposed Text

Section 7306. 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 (50 years for projects located on Tribal Trust Land), commencing on the date of permanent loan closing or conversion for construction financing, or upon recordation of the Program loan documents if permanent financing only.
- (c) 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 pursuant to UMR Section 8315. The Program loan shall have priority over loans provided by the Affordable Housing Program administered by the Federal Home Loan Bank.
- (d) For projects located in Indian country, the subject instrument shall be deemed sufficiently recorded if recorded with the Land Titles and Records Office at the BIA or if the subject instruments are recorded in the County recording system having jurisdiction over the property. If a Department loan is recorded on fee land, then there must be a restriction preventing that land from being put into trust until the Department loan/grant term is complete.
- (e) Where the requirements of federal funding for a project, or the requirements of the low-income housing tax credits used in a project, would cause a violation of the requirements of these guidelines, the requirements of these guidelines may be modified as necessary to ensure program compatibility. Where the requirements of federal funding or tax credits create what are deemed to be minor inconsistencies as determined by the director of the Department, the Department may waive the requirements of these guidelines as deemed necessary to avoid an unnecessary administrative burden. Any such modifications or waivers shall be recorded in the Regulatory Agreement or other documents governing the MHP loan.

Section 7307: Maximum Loan Amounts

Revised to clarify that only Department-Assisted Special Needs Units are eligible for higher base loan amounts, added base loan amounts for 9 percent projects, and removed limits on projects being developed pursuant to an inclusionary housing ordinance.

Rationale

The revision of Section 7307 includes renumbering and specifically limits the higher loan amounts for Special Needs Units to Department “Assisted” Units regulated as Special Needs or Supportive Housing under any Department program, to provide an incentive for sponsors to agree to an arrangement that gives the Department enforcement rights over the Units, and thereby to increase the likelihood that they will continue to serve the target population, over time.

The revision of this section includes the base limits for 4 percent and 9 percent projects and places limitations on post-award changes to tax credit preference.

Removal of the limitations imposed by current section 7307(c) and renumbering of remaining sections. Historically, MHP has provided funding to affordable housing developments constructed pursuant to inclusionary housing ordinances without these limitations, which is consistent with the Department’s primary mission of providing affordable housing and furthering access to opportunities. Considering the extreme shortage of housing in California, imposing a limitation which excludes qualified developers seems incompatible with this mission. Eliminating this limitation will create an incentive for Sponsors to develop projects with deeper affordability and serve Supportive Housing, Special Needs and Homeless populations, which would not otherwise be required under the local ordinance. It has also been suggested by stakeholders that these developments are often located in High and Highest Resource Areas, where the Department encourages development.

Proposed Text

Section 7307. Maximum Loan Amounts

- (b) The MHP loan amount is further limited to the sum of:
- (1) A base amount per Restricted Unit; plus
 - (2) The amount per Restricted Unit required to reduce Rents from 30 percent of 60 percent of AMI to the actual maximum restricted Rent for the Unit, assuming that the Rent reduction will be achieved by substituting Program funds for private amortized debt, and calculated by the Department based on private market multifamily rental loan terms available at the time of issuance of each NOFA.
 - (3) For projects utilizing four percent tax credits, or no tax credits, the initial base amount shall be \$175,000, per Department Assisted Unit qualifying as Special Needs Housing; \$175,000, per Restricted Unit in a Large Family new construction project located in a “High Resource” or “Highest Resource” area on the TCAC/HCD Opportunity Map, regardless of unit size; and \$150,000, per other Restricted Unit and any Manager Units.

For projects utilizing nine percent tax credits the initial base amount shall be \$110,000, per Department Assisted Unit qualifying as Special Needs Housing; \$110,000, per Restricted Unit in a Large Family new construction project located in a “High Resource” or “Highest Resource” area on the TCAC/HCD Opportunity Map,

regardless of unit size; and \$95,000, per other Restricted Unit and any Manager's Unit.

- (4) The loan limits specified in subsection (3) shall be calculated based upon the type of tax credits selected in the MHP Application.
- (c) For loan limit calculations, Unit count shall include the number of single-family houses plus the number of Units within an apartment building or Residential Hotel.
- (d) The loan limit will be calculated based upon the units' level of income restriction and number of bedrooms per Unit.
- (e) In each NOFA, the Department shall establish a maximum per Project loan amount. This maximum shall be set at a level that ensures sufficient demand for Program funds while meeting the Program's geographic and other distribution goals, taking into account the demand evidenced in previous funding rounds, the availability of other sources of rental subsidy financing and the total amount of Program funds available for award.

Section 7309: Market Studies

This revision adds requirements for market information related to demand for Special Needs units, except where referrals are made through the local Coordinated Entry System.

Rationale

The Department has found that many projects proposing occupancy restrictions and garnering points at time of application are having difficulty leasing these units when the project is completed. In some cases, Sponsors are requesting waivers of the occupancy requirements. Evaluation of market information applicable to occupancy-restricted units at the time of application is intended to provide the Department with reasonable assurance that sufficient demand exists for these units.

Proposed Text

- (a) As a condition of funding, the Department ~~may~~ will require an appraisal or market study, or both, to:
- (c) Any market study required by the Department shall conform to the market study guidelines adopted by TCAC and be prepared at the Sponsor's expense by an individual or firm which:
 - (5) For projects that serve Special Needs Housing Populations, the Sponsor shall provide supplemental market information supporting the demand for the target populations. Sources of supplemental information may include local agencies having experience with the target population, Regional Centers, local Veteran's Services Office, local rapid re-housing providers, local farm bureau, or other third-party source.

- (6) For Special Needs Housing Projects that receive referrals from the local CES, market demand is assumed, so supplemental market information is not required.

Section 7311: Rent and Unit Designation Adjustment

Renamed and reorganized for clarity.

A previous proposal to encourage balancing of rent increases with corresponding rent reductions for lower income households was not adopted. Although stakeholders generally supported the concept, the proposal would create an undue administrative burden.

Section 7312: Rent Standards.

Subsection 7312(f)(3) revised for clarity regarding timing of notification of rental assistance termination.

New subsection 7312(f)(3)(D) allows the Department to reimpose rent or occupancy restrictions, in whole or in part, based on an analysis of project feasibility.

Rationale

The Department recognizes that modification of rent or occupancy requirements may be necessary due to the loss of rental subsidies or changes in market conditions. It is also reasonable to expect that if new resources are found, or market conditions improve, the Department may reimpose the original restrictions in whole or in part, as determined by the Department, based on an analysis of project feasibility.

Proposed Text

Section 7312. Rent Standards.

- (f) Where a Project is receiving renewable Project-based rental assistance:
 - (1) The Sponsor shall in good faith apply for and accept all renewals available.
 - (2) The Sponsor shall fund a transition reserve to be used in the event the rental assistance contract is terminated. The transition reserve shall be in an amount sufficient to prevent, for one year, rent increases for Units that formerly received rental assistance and were restricted to households with incomes not exceeding 30 percent of AMI. The transition reserve may be capitalized or funded from annual project cash flow in amounts to be approved by the Department. Use of funds in the reserve shall be subject to the review and approval of the Department; and

- (3) If the Project-based rental assistance is terminated, the owner shall notify the Department in writing immediately upon notice of subsidy termination and shall make every effort to find alternative subsidies or financing structures that would maintain the tenant income, rent, and special population targeting specified in the Department's regulatory agreement. Upon documenting to the Department's satisfaction unsuccessful efforts to identify and obtain alternative resources, and where the termination occurs through no fault of the owner:
- (A) Rents and income limits for Units previously covered by this assistance may be increased above the levels allowed pursuant to subsection (c), above, but only to the minimum extent required for Fiscal Integrity, as determined by the Department, with income limits not to exceed 60 percent of AMI and Rents not to exceed 30 percent of 60 percent of AMI.
 - (B) Restrictions for Units previously covered by this assistance requiring occupancy by special populations, including by Persons Experiencing Homelessness, Persons Experiencing Chronic Homelessness and Special Needs Populations, may be modified or eliminated, but only to the minimum extent required for Fiscal Integrity, as determined by the Department.
 - (C) Any increase in rents and income limits pursuant to subsection (A) above, or modification of special population occupancy requirements pursuant to subsection (B), shall require advance Department approval. To the maximum extent possible, these changes shall minimize the impact on the lowest income Project residents and shall be phased in as gradually as possible.
 - (D) If, following any increase in Rents and income limits pursuant to subsection (A) above, or modification of special population occupancy requirements pursuant to subsection (B) above, new resources become available, or market demand changes, allowing reversion to the former income and Rent limits or special population occupancy requirements while maintaining Fiscal Integrity, the Department may reimpose these income and Rent limits or special population occupancy requirements, in whole or in part, subject to analysis of Project feasibility.

Section 7314: State and Federal Laws, Rules, Guidelines and Regulations

New section added to clarify several state and federal laws applicable to the MHP Program.

Rationale

Although compliance with these laws is required and Sponsors are currently required to provide certifications of compliance in the application, the requirements have not previously been stated in the Guidelines. This new section ensures consistency between the Guidelines and application.

Proposed Text

The Sponsor agrees to comply with all applicable state and federal laws, rules, guidelines and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Development, the Sponsor, its contractors or subcontractors, and any Loan activity.

(a) Fair Housing Act

The Sponsor shall comply with all state and federal fair housing laws. At the Department's election, Sponsor must submit an attorney's opinion acceptable to the Department describing the intended occupancy restrictions and how they comply with the California Unruh Civil Rights Act (Civ. Code, §§ 51 - 53), the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) and the FEHA regulations (California Code of Regulations, title 2, sections 12005-12271. Occupancy restrictions must be carried out in a manner which does not violate state or federal fair housing laws.

(b) Americans with Disabilities Act and Accessibility

The Sponsor shall ensure compliance with all applicable state and federal building codes and accessibility laws and standards. In addition, the Sponsor shall ensure that the Project meets the following requirements:

- (1) New Construction Projects: All new construction projects shall adhere to the accessibility requirements set forth in Chapter 11A and 11B of the California Building Code (CBC).
- (2) All new construction projects must provide a minimum of five percent (5 percent) of the units with features accessible to persons with mobility disabilities plus a minimum of two percent (2 percent) of the units with features accessible to persons with hearing or vision disabilities
- (3) Compliance and Verification: Prior to loan closing, the Sponsor shall provide a certification of compliance, signed by the Borrower and the project architect as well as third party documentation confirming compliance (by a CASP certified architect or someone with demonstrated experience meeting federal accessibility standards.)

(c) Violence Against Women Act

Where applicable, Sponsors shall ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as survivors of domestic violence, dating violence, sexual assault, or stalking, or for being affiliated with a victim, pursuant to 34 U.S.C. § 12491

(d) California State Prevailing Wage Law

Projects receiving funding under the Program are subject to California’s prevailing wage law (Lab. Code, § 1720 et seq.). The Sponsor should seek professional legal advice about the law’s requirements. Prior to closing the Program Loan, the Department will require a certification of compliance with California’s prevailing wage law. The certification must verify that prevailing wages have been paid 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 the Sponsor.

(e) Pet Friendly Housing Act

Sponsor shall authorize residents of the housing development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (California Health & Safety Code, Section 50466

Section 7317: Application Process

New subsection 7317(b) prohibits substitution or “swapping” of previously awarded Department funds and requires forfeiture of prior award, prior to submitting a new application for MHP funding. This limitation is consistent with CDLAC’s post allocation limitations.

New subsection 7317(c) adds limitations on concurrent applications, consistent with CTAC limitations.

New subsections 7317(f) through (h) create set-asides for the highest ranked application submitted by a BIPOC or Tribal Entity.

Rationale

With four percent bond allocations now being competitive, it is critically important that funds are awarded to projects that are ready to move forward to align the Department’s resources with timely Unit production. It is an inefficient use of limited public resources, and not appropriate to deny one applicant funding and impede Unit construction, while another applicant can delay the deployment of funding while reapplying or changing programs. To ensure the liquidity of program funds, applicants seeking to swap previously awarded funds must forfeit their prior award, in writing, prior to the application due date without assurance of receiving a new award. This prohibition applies to funds awarded under any Department program, including a prior MHP award.

Over the last few years, the Department has noted a substantial increase in the number of separate applications being submitted concurrently to multiple programs as Sponsors compete for available resources. Although this “shotgun” approach is somewhat understandable, it places an undue burden on Department staff and leads to confusion and uncertainty in appropriate and fair awarding of funds. This prohibition is applicable only to separate, concurrent applications and not to concurrent applications proposing the same Department sources.

As authorized under AB 1010 (2019) the Department is authorized to waive or modify program requirements and create set-asides to eliminate or reduce barriers to participation by Tribal Entities. Similarly, a set-aside for BIPOC eligible projects is desirable to promote equity

in project development. These set-asides are consistent with other Department programs, CDLAC and TCAC.

Proposed Text

Section 7317: Application Process

- (b) Substituting previously awarded Department funds is prohibited, except as provided herein. Applicants seeking to substitute previously awarded funds must request withdrawal of their prior award in writing and provide reasonable justification that the substitution is necessary to ensure project feasibility. Substitutions based solely upon Sponsor preference or convenience will not be permitted. Department approval of the withdrawal is required prior to the application due date without assurance of receiving a new award. This prohibition applies to funds awarded under any Department program, including a prior MHP award.
- (c) Applications for funding while a separate, concurrent application is pending shall not be considered. For example, if a Sponsor has submitted an AHSC application prior to the MHP application deadline, the AHSC application is under review, the AHSC application does not include funding available under the applicable MHP NOFA and the MHP NOFA application does not include AHSC funding, the application will be deemed ineligible. Concurrent applications proposing the same Department funding sources is permitted.
- (d) In order to implement goals and purposes of the Program, the Department may adopt measures to direct funding awards to designated Project types including, but not limited to, Rural Area Projects, Projects located in areas needing additional funding to achieve a reasonable geographic distribution of Program funds, Projects preserving continued affordability, and Projects with specified funding characteristics. These measures may include, but are not limited to:
 - (1) Issuing a special NOFA for designated Project types.
 - (2) Awarding bonus points within a particular NOFA to designated Project types.
 - (3) Reserving a portion of funds in the NOFA for designated Project types.
 - (4) Notwithstanding anything in these guidelines to the contrary, a special NOFA issued pursuant to this subsection may establish an over-the-counter application process, meaning the Department continuously accepts and rates applications according to minimum threshold criteria published in a NOFA for the process, and makes loans to Projects that meet or exceed these criteria until the funding available for the process is exhausted. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with Section 7319 20(a), and shall establish minimum funding threshold criteria based on the rating criteria set forth in Section 7320(b).
- (e) Of the total MHP funds awarded and authorized by the Veterans and Affordable Housing Bond Act of 2018 (Proposition 1), the share that is awarded to Senior Projects shall be

not less than the percentage of lower income renter households in the state that are lower income elderly renter households.

- (1) The required percentage shall be calculated using data from the American Community Survey or successor survey conducted by the U.S. Census Bureau, as defined, and reported by HUD. The required percentage shall be calculated using HUD's most recent definitions and report of the data.
 - (2) In each funding round, to the extent the Department receives applications meeting the requirements of Section 7320, the amount of awards to Senior Projects will be sufficient to make the share of total cumulative Proposition 1 MHP awards to Senior Projects at least equal to the percentage calculated pursuant to the preceding subsection, less one percent.
 - (3) The required percentage as of the effective date of these guidelines is 18.3 percent.
- (f) The top ranked application submitted by an eligible Tribal Entity, which meets all Threshold requirements pursuant to Section 7319, will receive an award of funds available under each NOFA. Lower scoring applications will be ranked among all other applications and may receive an award of funds pursuant to Section 7320.

Section 7318: Application Content and Application Eligibility Requirements

Subsection (b) revised and reformatted for clarity, readability and to describe the content of MHP application forms more accurately. Adds specific requirement that a letter of notification to the local legislative body, or Tribal governing body is required.

New subsection 7318(b)(5) added to clarify that an application will not be deemed incomplete for failure to provide documents related solely to scoring; however, such a failure may adversely impact the application's score.

A previous proposal to include "Good Standing" requirements has not been adopted.

Rationale

With respect to subdivision (b), the existing text implies that the guidelines provide a complete specification of the information requested on applications for MHP loans. This is not actually the case; some of the information needed to evaluate applications is required by statute or other regulations or guidelines, and some is needed to conduct the analysis mandated by the guidelines. The revisions clarify this situation.

Proposed Text

Section 7318. Application Content and Application Eligibility Requirements

- (a) Application shall be made on a form(s) made available by the Department, without modification, requesting the information deemed necessary by the Department to evaluate compliance with the MHP guidelines and all applicable statutes, regulations, and similar rules.
- (b) An application shall be deemed complete when:
 - (1) The application includes a letter providing prior notification to the local legislative body, or Tribal governing body, pursuant to HSC Section 50675.7(e).
 - (2) The application includes all Threshold required documents and reports as set forth in Section 7319, the NOFA, and the application.
 - (3) The application includes authorizing resolutions of the governing boards of both the Sponsor and a co-Sponsor, except where the Sponsor(s) are individuals.
 - (4) The Department can review the application and assess the proposed project's feasibility pursuant to UMR Section 8310.
 - (5) Pursuant to Section 7320, applications shall be evaluated based solely upon the contents of the application. If documents required for scoring are not included, the application will not be deemed incomplete; however, failure to submit necessary documents, as set forth in the NOFA or application, may adversely affect the score of the application. Information or documents received after the application submission deadline will not be considered.
- (c) The Sponsor shall disclose on the MHP application whether the Project will be part of an application to TCAC seeking hybrid tiebreaker incentives. This election is irrevocable. Once awarded, the Department will not break up or combine project awards to accommodate a conversion to or from a hybrid project.

Section 7319: Threshold Requirements

This revision moves threshold requirements from 7320 to new Section 7319.

New subsection 7319(g) adds requirements for “walkable path” requirements and broadband minimums to site amenities, consistent with other Department programs and agencies.

New subsections 7319(h) and (i) adds minimum requirements for service amenities, consistent with CDLC/TCAC scoring criteria.

New subsection 7319(k) adds site control exceptions for Tribal Entities.

Rationale

The proposed changes are primarily intended to improve clarity and consistency among Department programs, CDLAC and TCAC requirements and/or scoring criteria.

Subsection (k) adds site control exceptions for projects developed in Indian country.

Proposed Text

Section 7319: Threshold Requirements

Projects shall not be eligible for an award of funds unless the application demonstrates that all the following threshold requirements have been met:

- (a) The applicant is an eligible Sponsor pursuant to Section 7303.
- (b) The application involves an Eligible Project pursuant to Section 7302.
- (c) All proposed uses of Program funds are eligible pursuant to Section 7304.
- (d) The application is complete pursuant to Section 7318.
- (e) The Project will maintain Fiscal Integrity consistent with proposed Rents in the Assisted Units and is feasible pursuant to the underwriting standards in UMR Section 8310.
- (f) The Project site is free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove or cannot be mitigated.
- (g) 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.
 - (1) At a minimum, public transportation shall be accessible via a walkable route. The walkable route, after completion of the proposed Project, shall be free of negative environmental conditions that deter pedestrian circulation, such as barriers; stretches without sidewalks or walking paths; noisy vehicular tunnels; streets, arterials or highways without regulated crossings that facilitate pedestrian movement; stretches without shade or cover; or stretches without lighted streets.
 - (2) Projects involving new construction, acquisition and Substantial Rehabilitation, or conversion of nonresidential structures to residential dwelling units must be capable of accommodating broadband service with at least a speed of 25 megabits per second for downloading and 3 megabits per second for uploading (25/3). Internet service and its ongoing fee is not required.

- (h) Projects with Special Needs Units shall provide services suitable to the needs of the target population; and, the application shall demonstrate a specific, feasible plan for delivery and funding of those services, including identification of the LSP, service delivery partners and funding sources, pursuant to Section 7326;
- (i) Projects that do not include Special Needs Units, shall provide service amenities sufficient to achieve a minimum score of 7 points pursuant to CDLAC Regulations, Section 5230(i).
- (j) The Project complies with the restrictions on demolition as set forth in UMR Section 8302; and
- (k) The Project complies with the site control requirements as set forth in UMR Section 8303. For projects developed in Indian Country, the following exceptions apply:
 - (1) Where site control is a ground lease, the lease agreement between the Tribe and the project owner is for a period not less than 50 years; and
 - (2) An attorney's opinion regarding chain of title and current title status is acceptable in lieu of a title report.

Section 7320: Project Selection renamed Scoring

As noted above, the contents of the existing subsection 7320(a) will be moved to Section 7319, for clarity only. This means the provisions of subdivision (b) in the existing guidelines discussed would be in subsection (a), as shown in the proposed text. Also, this subsection will be renamed as "Scoring" to accurately describe the content.

The substantial revisions proposed for this Section include: 1) removes Leverage from scoring factors and adds it to tie-breaker; 2) Local Housing Needs increases points available for Large Family or Special Needs new construction projects located in High/Highest Resource Opportunity Areas and adds criteria for Moderate/emerging Opportunity areas, eliminates requirement the Senior projects also qualify as Special Needs, but adds requirement that projects include units restricted to Special Needs populations, revises criteria regarding homeless units to specify "chronically homeless with referrals from the local CES; Development and Ownership Experience revised to eliminate two-tier scoring of projects completed within the preceding ten years and add scoring criteria for ownership experience, clarification of requirements when using the experience of a Principal, adding Tribal Entities and BIPOC Developers to alternate scoring method; Added incentive point for BIPOC applications, subject to certain criteria; Readiness points increased, adding Borrower organizational documents as a readiness factor and eliminating the previously used bonus point, clarifies requirements for enforceable funding commitments of bond financing and subsidies, clarifies NEPA requirement when solely applicable to Project-based rental assistance, and distinguishes the three distinct scoring criteria for land use approvals; Adaptive Reuse/Infill/Proximity to Amenities/Sustainable Building Methods is revised to add broadband requirements, to update Sustainable Building methods, consistent with TCAC, and to add a boost for Large Family or Special Needs new construction projects in High/Highest Resource Areas; Cost Containment and Enhanced Accessibility added as scoring factors.

The Tiebreaker has been revised to include three scoring factors: affordability, leverage and Units restricted to homeless populations. Consistent with CDLA and TCAC, Large Family or Special Needs new construction projects located in High/Highest Resources Areas receive a boost in the leverage scoring factor.

Rationale

Throughout stakeholder engagement sessions, there were recurring concerns that current scoring was sometimes skewed in favor of some projects or project areas over others and in some instances foreclosing the possibility of accessing MHP funding entirely. Stakeholders consistently urged a “leveling” of the playing field, not gain an advantage, but to have a fair shot at obtaining funding. The Department carefully and thoroughly considered all stakeholder feedback in revising the scoring criteria in a way that is fair and achieves the Department’s policy objectives.

Stakeholders acknowledged that leverage favors projects located in more affluent jurisdictions and creates a disadvantage in jurisdictions with substantial housing needs, but limited resources. Stakeholders and MHP staff also agree that leverage may be too easily manipulated to achieve full points; for example, by underestimating development costs and requesting less funding than needed. The Department has observed numerous instances of projects receiving awards then reporting substantial funding gaps and applying for other Department funds. By reducing the impact of leverage scoring, the Department anticipates that stakeholder will be induced to submit more accurate development proposals and request the full funding needed Stakeholders proposed, and the Department agrees, that leverage should be eliminated as a scoring factor. However, the Department has an interest in encouraging use of local funds, so leverage will now be included as a tie-breaker factor.

Local Housing Needs was revised in order to 1) promote development of projects in High/Highest Resource Areas, 2) reduce the burden to Senior projects, which often experience difficulties in achieving and maintaining Special Needs project qualified occupancy, and to encourage the inclusion of Special Needs Units in other project types. This revision reduces the percentage of Special Needs Units required to receive points, and 3) due to consolidation of Supportive Housing into the Special Needs project type, criteria is revised to encourage units for chronically homeless, with referrals from local CES to ensure permanent affordable housing for this vulnerable population, formerly specific to “Supportive Housing”.

Development and Ownership Experience was revised based on Stakeholder feedback indicating that current criteria created a disadvantage for smaller developers, especially those operating in less affluent jurisdictions. In a widely fluctuating economic environment, many stakeholders cannot develop enough projects within a five-year period to achieve maximum points. In addition, stakeholders indicated that current scoring relies solely on projects completed or “developed” without regard to experience in owning and operating projects post-completion. Based on this feedback, this Section is revised to award two points for each project completed within the preceding ten years and adds additional scoring factors for ownership experience. The ownership scoring criteria and documentation is comparable to the approach taken by TCAC.

Stakeholders objected strongly to a previous proposal to eliminate the experience of a Sponsor's principal in current Section 7320(b)(3)(B), so that proposal was not adopted; however, this revision specifies that the experience of the principal shall meet certain documentation requirements, which will be specified in the MHP application and NOFA.

To further the goals of AB 1010, promote equity and reduce barriers to access of funds, provisions allowing Tribal Entities and BIPOC Developers to qualify for points under alternate scoring have been added. Regarding Tribal Entities, these provisions are consistent with those currently allowed by TCAC.

Project Readiness was revised for clarity regarding enforceable funding commitments for bond financing and subsidies, the applicability of NEPA in relation to project-based vouchers; and makes permanent the points awarded for submission of complete Borrower organizational documents.

The proposed revisions would require applicants to submit commitment letters from bond lenders, along with other construction and permanent funding commitments to receive full points under this Section. This revision also clarifies that a commitment of rental assistance subsidies (e.g. PBV) is not required at time of application; however, commitment of operating subsidies is required. This revision also clarifies that when a NEPA is required solely for the purpose of obtaining PBVs, with no federal funding of capital costs, completion of the NEPA is not required prior to application to receive points in this category.

Based on stakeholder feedback, a previous proposal to require commitment of other Department program funds prior to application has not been adopted.

With respect to the points for local land use approvals provided for in the existing 7320(b)(5)(C), the intent was to limit this category to a maximum of three points, with the different point levels defined by 7320(b)(5)(C)(i), 7320(b)(5)(C)(ii) and 7320(b)(5)(C)(iii). The added "or" statements make this clear.

The bonus point offered under the round two, three and four NOFAs for submission of Borrower organizational documents has proven highly effective in improving the efficiency of producing and executing standard agreements for the awardees. The newly added subsection 7320(d)(5) makes the previous bonus permanent increases total points available to two points.

Cost Containment criteria is added to encourage efficient use of funds in project development. This criterion appears to be consistent with the goal of CDLAC's tiebreaker.

Enhanced Accessibility criteria is added as a scoring factor. TCAC regulations currently include enhanced accessibility as a threshold requirement; however, the Department has concerns regarding monitoring and enforcement of requirements not in current building codes. As an alternative to TCAC, this criterion provides an incentive for Sponsors to exceed code minimum, should TCAC change its requirements. For as long as TCAC's requirements remain in effect, all tax credit projects will likely achieve full points in this category.

7320(f) Tiebreaker revised to include three factors. Many Stakeholders have recommended that the Department change its tie-breaker calculation methodology. In the past, MHP funds

were offered under two different programs having separate NOFAs and requirements: MHP-General, which was considered the “vanilla” funding program, with an emphasis on deep affordability; and MHP-Supportive Housing, which focused on homeless and disabled populations. Following the passage of Prop. 1, these were blended into a single program, but the original MHP-General tie-breaker score remained unchanged. The current tie-breaker calculation does not account for current MHP policy objectives, including affordability and housing the homeless. This revision addresses this issue, as well as adding a factor for leverage of other funds.

Proposed Text

Section 7320. Scoring

Applications shall be reviewed by the Department to determine compliance with Section 7319, above, and shall be rated and ranked in accordance with this Section. Applications shall be ranked in the order of their point scores. The Department may establish a preliminary point score and ranking, based on reported self-scores for applications prior to determining their compliance with Section 7319. 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 Section 7319. Additional or alternative scoring may be implemented NOFAs for designated Project types as described above in Section 7317(b).

The criteria detailed below and summarized in the following table shall be used to rate applications:

1 Table: Criterion Maximum Score

Criterion	Maximum Score
Serving Lowest Income Levels	35
Addressing Most Serious Local Housing Needs	15
Development and Ownership Experience	40
Leverage of Other Funds	20
Readiness	20
Adaptive Reuse / Infill / Proximity to Amenities/ Sustainable Building Methods	20
Cost Containment	20
Exceeding Minimum Accessibility Requirements	10
Total	160

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

Applications will be scored based on the percentage of Restricted Units limited to various percentages of AMI, adjusted by household size, and as follows:

- (1) A maximum of 25 points will be awarded based on the Lowest Income Points Table below.

The “percent of Area Median Income” category may be used only once. For instance, 50 percent of Restricted Units at 50 percent of AMI cannot be used twice for 100 percent of units at 50 percent AMI and receive 25 points, nor can 50 percent of Restricted Units at 50 percent of AMI for 12.5 points and 40 percent of

Restricted Units at 50 percent of AMI be used for an additional 10 points. However, the “percent of Restricted Units” may be used multiple times. For example, 50 percent of Restricted Units at 50 percent of AMI for 12.5 points may be combined with another 50 percent of Restricted Units at 45 percent of AMI to achieve the maximum points.

Only projects in Rural Areas may use the 55 percent of AMI column.

Lowest Income Points Table (maximum 25 points):

2 Table: Percent of AMI

Percent of Area Median Income									
Percent Of Restricted Units		55%	50%	45%	40%	35%	30%	25%	20%
	50%	5*	12.5*	18.75	17.5	18.75	25	25	25
	45%	5*	11.25*	16.9	17.5	18.75	25	25	25
	40%	5*	10	15	17.5	18.75	25	25	25
	35%	4.4*	8.75	13.15	17.5	18.75	25	25	25
	30%	3.75*	7.5	11.25	15	18.75	22.5	25	25
	25%	3.15*	6.25	9.4	12.5	15.65	18.75	21.9	25
	20%	2.5*	5	7.5	10	12.5	15	17.5	20
	15%	1.9*	3.75	5.65	7.5	9.4	11.25	13.1	15
	10%	1.25*	2.5	3.75	5	6.25	7.5	8.75	10

*Available to Rural Area projects only

- (2) An additional 10 points will be awarded to projects where at least 20 percent of the Restricted Units are restricted as follows:

- (A) To households with incomes not exceeding 25 percent of AMI, in counties where AMI exceeds 150 percent of median family income for California, as reported by HUD (currently San Francisco, Santa Clara, San Mateo and Marin counties); or
- (B) To households with incomes not exceeding 30 percent of AMI, in other counties.

The units receiving points under this subsection (2) must be spread across the various bedroom-count units, starting with the largest bedroom count units (e.g. four-bedroom units), and working down to the smaller bedroom count units, assuring that at least 20 percent of the larger units are proposed at 25 percent or 30 percent of area median income, as applicable. If the applicant meets the 20 percent standard project wide, the 20 percent standard is not required among all the smaller units.

In Projects that rely on renewable project-based rental assistance contracts to maintain Fiscal Integrity consistent with the targeted income limits (and associated tenant Rents), scores will be based on the income and Rent limits applicable as long as the rental assistance contract remains in place.

(b) **The extent to which the Project addresses the most serious identified local housing needs – maximum of two categories, not to exceed 15 points maximum**

Five points will be awarded for each of the following conditions, except for condition (1), which will be awarded 10 points, met by the Project:

- (1) Large Family or Special Needs new construction Projects located in a “High Resource” or “Highest Resource” area as shown on the TCAC/the Department’s Opportunity Area Map.
- (2) Large Family new construction Projects located in a “Moderate (rapidly changing)” or “Moderate Resource” area as shown on the TCAC/ the Department’s Opportunity Area Map.

For purposes of subparagraphs (1) and (2), a project located in a resource area designated on the CTCAC/the Department’s Opportunity Area Map as “Missing/Insufficient Data” shall be considered to have the designation of the adjacent resource area that shares the longest common boundary with the resource area in which the project is located.

- (3) Large Family, Farmworker or Senior Projects having at least 15 percent of the Restricted Units restricted under the Program regulatory agreement as Assisted Units limited to occupancy by special needs populations.

- (4) Projects having at least 10 percent, or for Special Needs Housing Projects having at least 25 percent of the Restricted Units restricted under a Department Regulatory Agreement as Assisted Units limited to occupancy by Chronically Homeless households, with vacancies filled by referrals from the local CES, when and where this system is actively referring households to housing.
 - (5) Meeting one or more of the following conditions:
 - (A) Consisting of the new construction or acquisition and Rehabilitation of units not subject to income and rent restrictions at the time of application, unless the restrictions are associated with acquisition financing closed less than five years prior to this date.
 - (B) Qualifying as At High Risk or involving the conversion of single occupancy units without kitchens and bathrooms to units with kitchens and bathrooms.
 - (C) The Program loan amount is limited to the amount necessary to reduce rents below existing levels, to create new Restricted Units, or to make accessibility improvements necessary for occupancy by disabled persons.
- (c) **The development and ownership experience of the Project Sponsor – 40 points maximum.**
- (1) Applications will be scored based on the number of subsidized Rental Housing Developments (including tax credit Projects) that the Sponsor has completed and operated over the last ten years and whether the Sponsor is subject to penalties pursuant to subsection (9) below.
 - (A) For completed projects, a Sponsor may include the experience of its controlled affiliated entities or its principals (e.g. employed by, and under the control of the Sponsor and responsible for managing development activities), but not the experience of non-management board members.
 - (B) A Sponsor may include the experience of a partner (e.g. Joint Venture partners pursuant to Section 7303(e)) to gain experience points; however, the experienced partner must have a controlling interest in the Project's ownership and a substantial and continued role in the Project's ongoing operations, as evidenced in the organizational documents for the owner. Experience among partners shall not be aggregated. Any change in the ownership that reduces the Sponsor's role shall require prior written approval and recordation by the Department.
 - (C) If a Sponsor relies upon the experience of its principal for scoring, documentation of the principal's experience is required as set forth in the NOFA and application.
 - (2) To be counted towards experience pursuant to Section (c)(1), above, completed Projects cited for experience points must contain 10 or more units, except if the proposed Project contains less than 15 units and at least 70 percent of the total

units in the proposed Project are reserved for Special Needs Populations. Completed Projects submitted for experience points must contain at least five units.

- (3) Two points will be awarded for each Project completed in the ten years preceding the application due date, up to a maximum of 20 points.
- (4) Five points will be awarded to projects submitted by BIPOC Developers, or Joint Venture which include a BIPOC partner, or by BIPOC Developers which have contracted with an experienced developer pursuant to Section 7320(c)(8), below.
- (5) Two points will be awarded for each completed project which is currently owned and operated by the Sponsor or its controlled affiliate and has been in operation for at least three years, prior to the application due date, up to a maximum of 6 points; plus
- (6) Three points will be awarded for each completed project which is currently owned and operated by the Sponsor or its controlled affiliate for at least five years, up to a maximum of 6 points; plus
- (7) Three points will be awarded if at least one completed project which is currently owned and operated by the Sponsor or its controlled affiliate for ten or more years.

Double counting of Projects claimed in sections (5), (6) and (7) is not allowed. However, Sponsors may include projects, which exceed the minimums for one category in another qualifying category (e.g. a Sponsor may have many projects which have been operating for at least five years. Two of these projects may be claimed in (6) and up to three projects can be included in (5)).

To receive points for (5), (6) or (7), above the Sponsor must submit a certification from a third party certified public accountant (CPA) that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development's last financial statement has been prepared and have funded reserves in accordance with the partnership agreement and any applicable loan documents. All projects proposed for points in these sections must be specifically named in the CPA certification.

Further, for projects funded by Department programs, which are included in the CPA's certification, the project(s) must have demonstrated satisfactory past performance history and not currently subject to penalties, as described in paragraph (h), below.

- (8) Where at least 70 percent of the Units in the proposed Project are reserved for Special Needs Populations, or the Sponsor is a Tribal Entity or BIPOC Developer, the Sponsor may elect to have its application scored based on:
 - (A) The number of subsidized Rental Housing Developments that the Sponsor's development consultant or contracted developer has completed in the last 10 years; and

- (B) The number of subsidized Rental Housing Developments that the Sponsor, or affiliates or principals of the Sponsor either own or operate under a long-term lease or other arrangement that involves all responsibilities commensurate with ownership. For Tribal Entities, subsidized Rental Housing Developments includes housing developed utilizing HUD federal funding, or management of HUD conventional housing projects.

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

Applications scored under this alternative shall be awarded two points per Rental Housing Development completed in the last ten years, up to a maximum of 20 points.

Additionally, up to 15 points may be awarded for ownership experience pursuant to (5), (6) and (7) above.

- (9) Performance penalties shall be assessed pursuant to Administrative Memo No. XXXXX, as may be amended from time to time.

(d) Project Readiness – 20 points maximum, negative 5 points maximum

Points will be awarded to projects for each of the following circumstances as documented in the application and as indicated below. If a particular category is not applicable, full points shall be awarded in that category.

- (1) Four points will be awarded for obtaining enforceable commitments for all construction financing, not including, tax credits. Commitment of bond financing shall be evidenced by a lender commitment; allocation of bonds is not required. To be awarded these points, funding to be provided by another Department program must be awarded prior to final rating and ranking for the MHP application.
- (2) Four points will be awarded for adoption or certification of all necessary environmental reviews (California Environmental Quality Act and National Environmental Policy Act). Where NEPA is required solely for rental assistance provided under HUD's Housing Assistance Program (HAP) with no federal funding capital improvements, completion of the NEPA review prior to application is not required.
- (3) Land use approvals
 - (A) Three points will be awarded for obtaining all necessary land use approvals or entitlements necessary prior to issuance of a building permit, including any required discretionary approvals, such as site plan review or design review; or

- (B) Two points will be awarded for submission of a complete application to the relevant local authorities for land use approval under a nondiscretionary local approval process, where the application has been neither approved or disapproved; or
- (C) One point will be awarded for a letter signed by a planner certified by the American Institute of Certified Planners indicating that, in their opinion, the project meets all of the requirements for approval under a nondiscretionary local approval process, where an application has not been approved or disapproved by the local authorities.
- (D) A “nondiscretionary local approval process” is one that includes little or no subjective judgement by the public official and is limited to ensuring that the proposed development meets a set of objective zoning, design review and/or subdivision standards in effect at the time the application is submitted to the local government. A “nondiscretionary local approval process” includes Streamlined Ministerial Approval Processing under to Chapter 366, Statutes of 2017 (SB 35), By-Right Processing for Permanent Supportive Housing under Chapter 753, Statutes of 2018 (AB 2162)), housing element law (Government Code Section 65583.2(i), or other local process that meets the definition of non-discretionary approval process.

- (4) Four points will be awarded for obtaining commitments for all permanent financing, grants and operating subsidies, excluding tax credits. Commitment of bond financing shall be evidenced by a lender commitment; allocation of bonds is not required. Deferred-payment financing, grant funds and operating subsidies from other Department programs proposed for Project financing must be awarded prior to the final rating and ranking for the MHP application.

For projects proposing project-based rental assistance, commitments are preferred, but not required; however, a fully executed subsidy contract will be required prior to loan closing.

- (5) Five points will be awarded when the Borrower, including all affiliated entities, is fully formed and all required organizational documents are submitted with the application.
- (6) Five points will be subtracted for a Project utilizing low-income housing tax credits that will be part of an application to TCAC seeking hybrid tiebreaker incentives.

(e) **Adaptive Reuse / Infill / Proximity to Amenities/ Sustainable Building Methods - 20 points maximum.**

Except for Large Family or Special Needs Housing new construction projects located in “High Resource” or “Highest Resource” areas, which shall be scored in accordance with subsection (4) below, applications will receive five points for each of the following three conditions, up to a maximum of 15 points.

- (1) Infill development. Five points will be awarded for infill development, including adaptive reuse of vacant and underutilized commercial or industrial building located in a developed area served with public infrastructure. The Project will be:
 - (A) Located on a site where either:
 - i. At least 75 percent of the site was previously improved (including areas where improvements have been demolished) or used for any use other than open space, agriculture, forestry, or mining waste storage; or
 - ii. At least 75 percent of the perimeter of the site's adjoining parcels that are developed with Urban Uses (residential, commercial, industrial, public institutional, transit or transportation passenger facility use, or retail use, or any combination of those uses) but not including lands used for agricultural uses or parcels in excess of 15,000 square feet in size and containing only one single family residence, or is separated from parcels that are developed with Urban Uses only by an improved public right-of-way. In calculating this percentage, perimeters bordering navigable bodies of water and improved parks shall not be included; or
 - iii. The combination of at least 50 percent of site area as previously improved (including areas where improvements have been demolished) or used for any use other than open space, agriculture, forestry or mining waste storage, and at least 50 percent of the perimeter of the site adjoining parcels that are developed with Urban Uses, or is separated from parcels that are developed with Urban Uses only by an improved public right-of-way. In calculating this percentage, perimeters bordering navigable bodies of water and improved parks shall not be included.
- (2) Proximity to amenities. Five points will be awarded for projects achieving the maximum point score available for site amenities under TCAC Regulations, Title 4 CCR, Division 17, Chapter 1, Section 10325(c)(4)(A) or successor regulation.
- (3) Broadband access. Five points will be awarded for projects meeting the following requirements:
 - (A) Residential dwelling units are capable of accommodating broadband service with at least a speed of 100 megabits per second for downloading and 20 megabits per second for uploading. Internet service and its ongoing fee is not required; **AND**
 - (B) The application includes a plan for reducing barriers to access for project residents. The plan should be tailored to the needs of the tenant population and may include programs providing free or reduce internet prices; reasonable access to project facilities, computers, and shared Wi-Fi; and computer and Wi-Fi literacy training and technical assistance.

- (4) Sustainable building methods. Five points will be awarded for projects which meet or exceed the minimum building requirements set forth in TCAC Regulations, Section 10325(f)(7) or successor regulation.
- (5) Large Family or Special Needs Housing new construction projects located in “High Resource” or “Highest Resource” areas, as shown on the TCAC/HCD Opportunity Area Map, will receive five points plus five points for meeting each of the conditions described in subsections (2), (3) and (4) above, up to a maximum of 20 points.

(f) Cost Containment—20 points maximum

Where the Department adjusted threshold basis limit is less than or equal to 125 percent of the adjusted threshold basis limit, as calculated in the High Cost Verification form and pursuant to UMR 8311, 4 points will be awarded for each full 5 percent increment below 125 percent.

(g) The extent to which the Project exceeds the minimum accessibility requirements set forth in Section 7314(b)--10 points maximum.

- (1) Seven points will be awarded to new construction projects providing a minimum of ten percent (10 percent) of the Restricted Units with mobility features and a minimum of five percent (5 percent) of the Restricted Units with communications features, as defined in CBC 11B.
- (2) Ten points will be awarded to new construction projects providing a minimum of fifteen percent (15 percent) of the Restricted Units with mobility features and a minimum of ten percent (10 percent) of the Restricted Units with communications features, as defined in CBC 11B.
- (3) Ten points will be awarded to rehabilitation projects providing a minimum of ten percent (10 percent) of the Restricted Units with mobility features and a minimum of four percent (4 percent) of the Restricted Units with communications features, as defined in CBC 11B or where full compliance would be impractical or create an undue financial burden as supported by a Physical Needs/Capital Needs Assessment and architect’s certification.

(h) Performance Penalties—up to -50 points maximum.

Performance penalties shall be assessed pursuant to Administrative Memo No. XXXXX, as may be amended from time to time.

(i) Tiebreaker Score

In the event of tied point scores, the Department shall rank tied applications based on three factors: the lowest weighted average affordability of all residential units, leverage of other funds, and percentage of Restricted units limited to occupancy by homeless households, which shall be computed as follows:

- (1) Lowest weighted average affordability of all residential units:
 - (A) Multiply each income limit applicable to the Project by the number of Units restricted at that income level (market rate units shall be designated 100 percent AMI)
 - (B) Add the products calculated pursuant to the previous subsection
 - (C) Divide the sum calculated pursuant to the previous subsection by the total number of residential units in the Project to obtain the average affordability, as a decimal
 - (D) Subtract (C) from 1.0
 - (E) Multiply the calculation in subsection (D) by 1.5.
- (2) Leverage of other funds:
 - (A) Applications will be scored based on the leverage of other soft funds, meaning local Public funds, including land donations or fee waivers to be used for permanent funding of the development costs attributable to the Restricted Units as a percentage of the total amount of Department funds.
 - (B) Land donations will be counted as leveraged funds where the value is established with a current appraisal, with the amount discounted to reflect any fees, or other reliably predictable payments required as a condition of the donation.
 - (C) Add the sum of all eligible soft funds as set forth in subsections (A) and (B).
 - (D) Add the sum of all Department funding sources (as set forth in Section 7304).
 - (E) Divide (C) by (D) and express as a decimal
 - (F) Multiply the calculation in subsection (E) by 1.5 for Large Family or Special Needs Housing new construction projects located in a “High Resource” or “Highest Resource” area as shown on the TCAC/HCD Opportunity Area map. For all other projects multiply by 1.25.
- (3) The percentage of Restricted Units limited under Department Regulatory Agreements to occupancy by homeless, including chronically homeless populations.

The final tie-breaker score is the sum of sections (1) through (3) divided by three and rounded to six decimal points.

Section 7321: Performance Deadlines

Performance deadlines have been added, consistent with the Department’s disencumbrance policy, which will be applicable to all multi-family housing programs.

Rationale

Historically, MHP has not imposed performance deadlines, as a result, projects have sometimes languished for years, despite having been proposed and receiving points for being ready to proceed. The Department has a reasonable expectation that upon receipt of an award of funds, the project will proceed as expeditiously as possible. While aware of the current challenges posed by competition for bonds and tax credits, the Department has concluded that if an application is not competitive or cannot compete successfully within a reasonable period the funds may be allocated to another project.

Proposed Text

Section 7321: Performance Deadlines

- (1) Upon receipt of an award of Program funds to a Project, the Sponsor shall be required to secure all permanent financing, including tax credits and bond allocation no later than 24 months after the date of award.
- (2) Failure to meet the requirement set forth in (1) above shall result in withdrawal of the Department's funding award.
- (3) An extension, not to exceed six months, may be granted by the Department, at its sole discretion, only if the Sponsor has demonstrated to the Department's satisfaction that the failure was due to circumstances entirely outside the Sponsor's control and offers reasonable assurance that all financing can be secured within the extension period.
- (4) Failure to compete successfully for TCAC or CDLAC awards, alone, is not sufficient basis to receive an extension.
- (5) If a previously awarded bond allocation and/or tax credit reservation is withdrawn by TCAC or CDLAC for failure to meet deadlines, the Department's award shall be withdrawn, and no extensions will be granted.

Section 7322: Legal Documents

Section renumbered and revised to add cross-default provisions.

Rationale

The last several years have seen a substantial increase in the amount of funding, in total dollars as well as a percentage of total project financing. Given the level of funding, which may be provided under multiple programs, it is reasonable that the Department would include cross-default provisions, as would any prudent lender.

Proposed Text

- (a) Upon the award of Program funds to a Project, the Department shall enter into one or more agreements with the Sponsor, including a standard agreement, which shall

commit monies to fund the approved loan amount. The agreement(s) shall contain the following:

- (1) A description of the approved Project and the permitted uses of Program funds.
- (2) The amount and terms of the loan.
- (3) Provisions governing other Department funding, including cross-defaults as set forth in Section 7324.
- (4) The regulatory restrictions to be applied to the Project through the Regulatory Agreement.
- (5) Provisions governing the construction work and, as applicable, the acquisition of the Project site, and the disbursement of loan proceeds;
- (6) Special conditions imposed as part of Department approval of the Project.
- (7) Requirements for the execution and the recordation of the agreements and documents required under the Program.
- (8) Terms and conditions required by federal or state law.
- (9) Requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of loan proceeds.
- (10) The proposed schedule of the Project development, including land acquisition if any, construction loan closing, commencement and completion of construction or Rehabilitation work, occupancy by Eligible Households, and permanent loan closing.
- (11) The approved Project development budget and sources and uses of funds and financing.
- (12) Requirements for reporting to the Department.
- (13) Terms and conditions for the inspection and monitoring of the Project to verify compliance with the requirements of the Program.
- (14) Provisions regarding tenant relocation.
- (15) Provisions relating to the erection and placement on or in the vicinity of the Project site a sign indicating that the Department has provided financing for the Project. The Department may also arrange for publicity of the Program loan in its sole discretion; and
- (16) Other provisions necessary to ensure compliance with the requirements of the Program.

Section 7323: Sales, Transfers, Encumbrances, and Loan Payoff

Clarify the requirements for approving a project sale or similar transaction and establish a clear policy on use of refinance proceeds.

Rationale:

Subdivision (a) of the existing guideline has been interpreted by some as providing an entitlement to approval of a sale or similar transaction if the specified requirements have been met. The proposed revision is intended to make it clear that the Department may consider considerations beyond those explicitly called out in this subdivision. Other factors are sometimes important in evaluating a request for this type of approval, and it is difficult to specify all these factors in advance.

Similarly, the change to subdivision (c) is intended to clearly reinforce the idea that Department approval is a discretionary action, and not automatic.

The revisions to subdivision (d) aim to limit use of refinance proceeds, to avoid a windfall for sponsors and other parties involved with the project. The prohibition on use of such proceeds for limited partnership exit costs represents a deviation from current policy, as set forth in the Uniform Multifamily Regulations. It is based on the idea that sponsors knowingly assume responsibility for covering these costs when they enter into partnership agreements, are compensated for this through substantial developer fees, and should not be relieved of their responsibility through refinancing,

Proposed Text

Section 7323: Sales, Transfers, Encumbrances, and Loan Payoff

- (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 may be approved only if all the following requirements are met:
- (1) The existing Sponsor follows the Regulatory Agreement, or the sale, transfer, or conveyance will result in the cure of any existing violations;
 - (2) The successor-in-interest to the Sponsor agrees to assume all obligations of the existing Sponsor pursuant to the Regulatory Agreement and the program;
 - (3) The successor-in-interest is an eligible Sponsor and demonstrates to the Department's satisfaction that it can successfully own and operate the Rental Housing Development and comply with all program requirements; and
 - (4) No terms of the sale, transfer, or conveyance jeopardize either the Department's security or the successor's ability to comply with all program requirements.

- (b) If the Sponsor or its successor-in-interest is a partnership, the Sponsor shall not discharge or replace any general partner or amend, modify, or add to its partnership agreement, or cause or permit the general partner to amend, modify, or add to the organizational documents of the general partner, without the prior written approval of the Department. The Sponsor may transfer limited partnership interests without the prior written approval of the Department.
- (c) The Sponsor may transfer limited partnership interests without the prior written approval of the Department.
- (d) If the Department approves a sale, assignment, transfer, or conveyance in accordance with the provisions of 7323 (a), the Department shall grant its approval subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Project. Such conditions may include:
 - (1) The deposit of sales proceeds, or a portion thereof, to maintain required reserves, or to offset negative cash flow;
 - (2) The recapture of syndication proceeds or other funds in accordance with special conditions included in any agreement executed by the Sponsor; or
 - (3) Such conditions as may be necessary to ensure compliance with the Program requirements.
- (e) 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 will not permit refinancing of existing liens or additional financing secured by the Rental Housing Development except to the extent necessary to maintain or improve the Fiscal Integrity of the Project, to maintain Affordable Rents, or to decrease Rents and for no other purpose, including, but not limited to, cash payments to the Sponsor, repayment of general partner loans or of limited partner loans, or for limited partner buyouts. Notwithstanding the general provisions in UMR 8308(g), this special condition controls, in that no MHP reserve balance can fund a limited partner buyout or exit.
- (f) No MHP loan may be paid off prior to maturity without the prior written consent of the Department in its sole discretion, which consent shall be subject to conditions deemed necessary to ensure compliance with the Program requirements.

Sections 7324 Defaults and Loan Cancellations

Adds specific cross-default provisions.

Rationale

See section 7322, above.

Proposed Text

- (4) In the event the Project is or has been awarded additional Departmental funding, any and all such funding will be cross-defaulted to and among one another in the respective loan or, where applicable, grant documents. A default under one source of Departmental funding shall be a default under any and all other sources of Department funding in the Project.
- (c) The Department may cancel loan commitments under any of the following conditions:
- (1) The objectives and requirements of the Program cannot be met;
 - (2) Implementation of the Project cannot proceed in a timely fashion in accordance with the approved plans and schedules;
 - (3) Special conditions have not been fulfilled within required time periods; or
 - (4) There has been a material change, not approved by the Department, in the Project or the principals or management of the Sponsor or Project.

Upon Sponsor demonstration of good cause to comply with any or all of the conditions of this subsection, the Department may extend the date for compliance and shall provide the extension in writing.

Sections 7325 and 7326: Management and Maintenance and Supportive Services Plans

Renumbered and revised to separate current Section 7324 Management and Maintenance and add new Section 7326 Supportive Service Plans.

The proposed revisions differentiate service plan requirements for populations needing intense services from those that do not, require some level of service funding to be identified at time of application for projects targeting populations needing intensive services, align requirements with those in other Department programs, and make other changes.

Rationale

Different Special Needs Populations need different types and levels of supportive services. The current Guidelines do not adequately make this distinction. The proposed revisions set forth one set of requirements for populations needing intensive services, including persons experiencing high acuity homelessness, including chronic homelessness, and another for those needing only limited services, such as families and people who have special needs or lower-acuity homelessness and do not have significant behavioral health issues.

The revisions add requirements adopted by other Department programs serving similar populations, and common in the industry, such as including a tenant engagement plan as part of the services plan.

One of the more significant revisions is the addition of a requirement for lead services providers without extensive track records to include in the application commitments, or more likely letters of intent, for a quarter of the total services budget. This requirement has been adopted by other Department programs and is intended to increase the odds that needed services funding will be available when the project opens its doors.

Proposed Text

Section 7326. Supportive Services Plans

Supportive Services Plans must address the needs of the target Special Needs Population served. Subsections (a) and (b) below, distinguish between projects requiring intensive services and those requiring less-intensive services.

Additionally, the types of required or optional services varies depending upon the target population served. While most populations have the same required services, the difference between intensive and less-intensive services is the level and delivery of services. For example, in projects serving populations identified in subsection (b), certain intake, coordination and referral duties may be performed by a Resident Services Coordinator or other service specialist, rather than a Case Manager. Sponsors and/or Lead Service Providers are responsible to ensure that level of intensity and delivery of services is appropriate for the target population.

- (a) For Projects with Assisted Units serving Special Needs Populations that require intensive services, specifically including high acuity Homeless and Chronically Homeless populations, as well as other populations as determined by the Department, the Sponsor shall develop and implement a supportive services plan. A preliminary plan shall be submitted by the Sponsor at time of application and updated prior to the permanent closing of the MHP loan. It shall include:
 - (1) A description of the specific population to be served.
 - (2) A description of the tenant selection criteria and process for the units serving the designated Special Needs Populations, in accordance with applicable state and federal fair housing laws. For projects serving Homeless, including Chronically Homeless populations, indicate how the Project will be connected to the local CES and conform to Housing First practices, except as provided in Section 7302(f)(5).
 - (3) A description of the specific services to be provided, to include at a minimum, on-site Comprehensive Case Management as well as on or off-site mental health care, physical health care and substance use services. Any off-site services should be easily accessible, with the on-site services provider being responsible for helping tenants to remove transportation, application, scheduling, and other common barriers to accessing services in the community.
 - (4) Identification of the organization(s) that will provide services.

- (5) Location of services to be provided off site, a description of public and private transportation options available to access these services, without walking more than one-half mile and a viable plan (e.g., financial assistance) for assisting tenants to access those options.
- (6) A description of the evidence-based case management practices that will be employed including, but not limited to SOAR, trauma informed care and critical time intervention.
- (7) A tenant engagement plan (i.e., plan to encourage voluntary tenant participation in services as well as in community building, such as resident councils or similar forums).
- (8) A description of plans to ensure the safety and security of residents and staff, including guest and visitor policies, policies on the violation of safety rules, staff training, building design features intended to promote security, and similar matters.
- (9) A services line-item budget itemizing all expenses and listing the sources, amounts, and status (i.e., proposed or committed) of supportive service funds. Only costs tied to serving tenants in Assisted Units may be included. Industry practice indicates an annual budget of at least \$5,000 per household is typically necessary.
- (10) Funding source commitments, contracts, memorandum of understanding or letters of intent to provide operational funding for a minimum of 25 percent of the total service budget (excluding the project operating budgeted funds). This requirement may be waived where the lead service provider documents a history of securing supportive service funding similar to the total required in the project service budget, provided that past funding was secured for the same purpose.
- (11) A staffing plan and line-item budget, with staffing levels sufficient to meet the needs of the target population. As specified in Section 7302, on-site Comprehensive Case Management services must be provided, with a resident to Case Manager ratio not exceeding 20 to 1.
- (12) A statement from a public or nonprofit funder or regulatory agency having oversight or monitoring responsibilities for the proposed supportive services for the proposed target population that verifies that the proposed services and staffing levels are adequate and appropriate to meet the needs of the target population(s), and that the Sponsor or proposed service provider is a viable provider of the proposed supportive services.
- (13) A description of how service staff and property management staff will work together to prevent evictions and to implement reasonable accommodation policies for leasing units and ongoing operations, including communication protocols.
- (14) Identification of outcome measures to be tracked, description of the data to be collected for each measure, and explanation of the methods for data collection and entry.

- (15) Other information deemed necessary by the Department to evaluate the proposed services, which may differ by tenant population.
- (b) For Projects serving Special Needs Populations that do not require intensive services, including but not limited to low-acuity homeless, individuals or households “At Risk of Homelessness”, as defined in (d) below, and other populations as determined by the Department, the Sponsor shall develop and implement a supportive services plan that includes:
 - (1) A description of the specific population(s) to be served.
 - (2) A description of the tenant selection criteria and process for the units serving the designated Special Needs populations, in accordance with applicable state and federal fair housing laws.
 - (3) A description of the specific services to be provided.
 - (4) A tenant engagement plan (i.e., plan to encourage voluntary tenant participation in services as well as in community building, such as resident councils or similar forums).
 - (5) A services line-item budget itemizing all expenses and listing the sources, amounts, and status (i.e., proposed or committed) of supportive service funds. Only costs tied to serving tenants in Assisted Units may be included. Industry practice indicates an annual budget of at least \$3,000 to \$5,000 per household is typically necessary.
 - (6) Funding source commitments, contracts, memorandum of understanding or letters of intent to provide operational funding for a minimum of 25 percent of the total service budget (excluding the project operating budgeted funds). This requirement may be waived where the lead service provider documents a history of securing supportive service funding similar to the total required in the project service budget, provided that past funding was secured for the same purpose.
 - (7) A services staffing plan and line-item budget, with staffing levels sufficient to meet the needs of the target population.
 - (8) Identification of the organization(s) that will provide services.
 - (9) Location of services to be provided off site, and a description of public and private transportation options available to access these services, without walking more than one-half mile and a viable plan (e.g., financial assistance) for assisting tenants to access those options.
 - (10) A description of plans to ensure the safety and security of residents and staff, including guest and visitor policies, policies on the violation of safety rules, staff training, building design features intended to promote security, and similar matters.

- (11) A description of how service staff and property management staff will work together to prevent evictions and to implement reasonable accommodation policies for leasing units and ongoing operations, including communication protocols.
 - (12) A statement from a public or nonprofit funding or regulatory agency with oversight or monitoring responsibilities for the proposed supportive services for the proposed target population that verifies that the proposed services and staffing levels are adequate and appropriate to meet the needs of the target population(s), and that the proposed service provider is a viable provider of the proposed supportive services.
 - (13) Identification of outcome measures to be tracked, description of the data to be collected for each measure, and explanation of the methods for data collection and entry.
 - (14) Other information deemed necessary by the Department to evaluate the proposed services, which may differ by tenant population.
- (c) In lieu of a supportive service plan meeting the requirements of (a) and (b) above, the Department may accept a similar plan already approved by the Department.
 - (d) “At Risk of Homelessness” means:
 - (1) Households with physical or sensory disabilities and transitioning from care facilities; or
 - (2) Households fleeing domestic violence, sexual assault, or human trafficking; or
 - (3) Households for which the absence of housing is a barrier to family reunification; or
 - (4) Homeless Youth, including Transition-Age Youth as defined in Government Code Section 12957; or
 - (5) Temporarily displaced households, which are eligible for placement under local rapid-rehousing or similar community service providers serving these populations.

Section 7327. Reporting

Existing Section 7325 renumbered as Section 7327 and adds a provision on unique reporting requirements for Special Needs Units.

Rationale

Current Guidelines do not mention the unique reports required to ensure compliance with Special Needs occupancy requirements. The proposed revision adds a summary of these requirements, to alert potential applicants for program funds and to improve compliance.

Proposed Text

Section 7327 Reporting.

- (a) No later than 90 days after the end of each Project fiscal year, the Sponsor shall submit an independent audit of the Rental Housing Development prepared by a certified public accountant in accordance with Department audit requirements, as periodically updated and incorporated by reference. Upon a determination that the cost of meeting this requirement exceeds the potential benefits from it to the Department and to the tenants of the Rental Housing Development, the Department may:
 - (1) Reduce the required frequency of the audit.
 - (2) Accept an audited financial statement in lieu of the audit; or
 - (3) Waive this requirement completely.
- (b) Projects with Special Needs Housing units restricted to Homeless, including Chronically Homeless persons shall report client data on local Homeless Management Information Systems (HMIS), if such systems are available, and must comply with local continuum of care HMIS requirements.
- (c) Projects, with Special Needs Housing units shall also report annually to the Department on all occupants of these units. The report must specifically identify the number of units rented to the elderly, and military veterans. The report must identify for all occupants of Units, their referral source, previous living situation, whether the occupant was experiencing Chronic Homelessness or Homelessness, length of stay and residence after exiting.
- (d) Projects with Special Needs units shall report annually to the Department on the services provided to residents of these units, the qualifying characteristic of each resident, and similar information.

Section 7328: Operating Budget and Schedule of Rental Income

Existing Section 7326 renumbered as Section 7328. More fully describes standard reporting requirements, which will enable projects to comply with program guidelines more readily.

Rationale

The current guideline does not mention an important form used to ensure adherence during occupancy with the program's rent limitations and similar requirements. By adding a description of this form, the proposed revisions will alert potential sponsors to the need to prepare/submit it and improve compliance.

Proposed Text

Section 7328. Operating Budget and Schedule of Rental Income

The Sponsor shall submit proposed operating budgets and Schedule of Rental Income (SRI) to the Department prior to occupancy and annually thereafter. These operating budgets and SRI shall be subject to Department approval, be consistent with related and supporting documentation, and comply with the following requirements:

- (a) Prior to loan closing, the Sponsor shall submit an initial operating budget and SRI to the Department. The initial operating budget shall show all anticipated income; expenses for management, operations and maintenance; debt service; and reserve deposits for the Initial Operating Year. The initial SRI shall show proposed Rents for individual units, gross rent floor date, rental and operating subsidy amounts, and similar information on both individual Units and the Project as a whole.
- (b) For the Initial Operating Year, Borrower shall operate the Development in accordance with the initial operating budget and SRI, which were approved by the Department prior to loan closing. Such budget shall show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year. Such SRI shall set forth the rent roll, which will identify each tenant household (by unit number or other method of household identification that is acceptable to the Department), as well as the following information in connection with each tenant household: size, income, current Rent, and proposed Rent adjustments (including utility allowances, if applicable). Such SRI shall provide estimated income for Assisted Units, non-Assisted Units, and Commercial Space or use.
- (c) For as long as deemed necessary by the Department to ensure compliance with Program requirements, but for no less than the full-term of the recorded Regulatory Agreement, the Sponsor shall submit to the Department for its approval, 60 days prior to the end of each Project fiscal year, a proposed operating budget and SRI on forms provided by the Department. The proposed annual operating budget and SRI, together, shall set forth the Borrower's estimates for the upcoming year of Operating Income, Operating Expenses, debt service amounts payable to reserves, and proposed Rent adjustments pursuant to Section 7312. The Department, at its sole discretion, may request in situations, such as, but not limited to, re-syndication, change of ownership, or change of Project fiscal year, submission of limited budget information, such as a proposed Rent schedule, proposed management fees, and reserve deposit amounts. The Department may re-impose the requirement for submission of complete operating budgets where necessary to ensure compliance with program requirements.
- (d) The initial and subsequent proposed operating budgets shall be subject to the approval of the Department based on its determination that the budget line items are reasonable and necessary considering costs for comparable Rental Housing Developments and prior year budgets. Actual expenditures more than the approved budget amount shall be subject to Department approval.

- (e) The initial and subsequent proposed SRI shall be subject to approval of the Department based on its determination that the proposed rents are in accordance with these guidelines and applicable regulations and statutes.
- (f) For Projects with non-Assisted Units or Commercial Space, all budgets submitted pursuant to this section shall show income and uses of income allocated among Assisted Units, Restricted Units, non-Restricted Units, and Commercial Space. The allocation method used for each budget line item shall be subject to Department approval and shall apportion income and expenses in a manner that accurately reflects the physical, operational, and economic characteristics of the Project.