

No Place Like Home Public Comments and HCD Responses October 2020

Comment Number	Guidelines Section	Comment	Response
1	101 (i) Definitions	<p>Correct the references to “paragraph (1) (A)” and “paragraph (1) or (2)” in Sections 101(i)a.ii., b., and c., as this section contains no paragraphs with that numbering. Ensure that the definitions of eligible populations, Sections 101(f, i, & w), align with the documentation that is available for housing applicants being referred by Coordinated Entry Systems (or alternate source) and/or required by other affordable housing funding programs that are typically combined with NPLH (e.g. low-income housing tax credits and Federal Home Loan Bank’s Affordable Housing Program). Resources for Community Development</p>	<p>The references to paragraph (1) (A)” and “paragraph (1) or (2)” in Sections 101(i) a.ii., b., and c refer to references within in the HUD definition of Chronically Homeless within 24 Code of Federal Regulations (CFR) Section 578.3. When reading this definition, refer to HUD's definition of Chronically Homelessness at 24 CFR 576.3. Use of the HUD definitions for Chronic Homelessness and Homelessness should align with the County's Coordinated Entry System (CES) protocols. For referrals of person's At-Risk of Chronic Homelessness, since this is an NPLH-specific statutory term, the County must work with the local CES to develop referral protocols for this population consistent with the definition of this term within Guidelines Sections 101, and the requirements for tenant referrals within Guidelines Section 211.</p>
2	200 (e) & 302 (e) - Stacking Provisions	<p>A clarification to the stacking prohibition in Article II, Section 200(e), and Article III, Section 302(e), and Article IV, Section 402(d), to allow other Department Funding Sources (e.g. MHP, AHSC) to rely on other financing such as low-income housing tax credits to restrict additional units while the Department Funding Sources may assist a smaller number of units, if necessary to comply with Article XXXIV. Correspondingly, it may help to clarify the use of the terms “assisted” and “restricted” in the guidelines regarding loan and regulatory agreements (Article II, Section 215 (b)(1)). Resources for Community Development</p>	<p>As a supportive housing program, NPLH must restrict all of the units it funds; therefore, there is no distinction between restricted and assisted units within NPLH. The stacking limitations only apply as it relates to stacking certain HCD sources with other specific HCD sources. The stacking provisions in the NPLH Guidelines are clear in this regard; therefore, no additional clarification will be made.</p>

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3	201 - Plan to Combat Homelessness	<p>Section 201 (c) (A) (ii). Include in the County plan, to the extent possible, the estimated number of residents experiencing “domestic violence.” There is a significant intersection between homelessness and domestic violence. One in three survivors of domestic violence become homeless at one point in their lives. These survivors are often women and children. Research has shown that domestic violence is frequently the precursor or immediate cause of homelessness. Victims then must choose to risk their life and stay with their abuser or leave and live without a shelter. Section 201 (c)(A)(ii) should reflect this reality and read, “to the extent possible, the estimated number of residents experiencing homelessness or chronic homelessness who are also experiencing serious mental illness, co-occurring disabilities or disorders, domestic violence, or who are children with a Serious Emotional Disturbance.” California Primary Care Association</p>	<p>No changes will be made to the requirements for the Plan to Combat Homelessness. Most Counties have already submitted these plans. However, the link between homelessness and domestic violence is widely understood among many County behavioral health and housing departments and the Department believes that services for persons living with domestic violence are being planned.</p>
4	202 (e) Integration	<p>While Eden understands the importance of requiring integration of the Target Population in a mixed-population affordable housing project, this proposed amendment to the Guidelines may unintentionally prohibit the use of NPLH funds in certain scattered-site and re-syndication development opportunities. In scattered-site developments, which often consist of multiple legal parcels, it may be impossible to include Assisted Units within every legal parcel. Eden is also proposing to build new NPLH Assisted Units on vacant land that an existing affordable housing project owns (as part of a re-syndication of the existing project). Being that the existing project is fully leased, it would be impractical to spread the Assisted Units throughout the entire project. We request that HCD staff be given the discretion to waive certain requirements in this section on a project-by-project basis. Eden Housing</p>	<p>The Department is concerned about the impact of various Project configurations on the segregation of extremely low income tenants from other tenants in affordable housing developments on the basis of income, disability type, or familial status. In response to public comments on the proposed integration amendments, for affordable housing developments built in phases, scattered site affordable housing developments, or TCAC hybrid transactions consisting of more than one building, the Department may grant exceptions to the requirements of Section 202 (e) (1) on a project by project basis if it can be demonstrated to the satisfaction of the Department that NPLH-eligible tenants or other tenants meeting eligibility criteria similar to that of NPLH could also be eligible to reside within those buildings or other sites not proposed to be part of the NPLH-funded portion of the project. In determining whether or not an exception to Section 202 (e) (1) will be provided, the Department will consider such factors as proposed income targeting, other target population requirements, and other requirements or restrictions at those other buildings or sites. See amendments made to Section 202 (e) (1). Similar amendments have also been made to Section 301 (a) (10) for Projects funded within NPLH Alternative Process Counties</p>

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5	202 (e) Integration	<p>We understand the intent here to clarify what constitutes a Project for purposes of meeting the integration requirement for developments receiving NPLH funds. We are concerned that the phrase “any other project of which the Project is a part” is very broad and could have unintended consequences. Such a definition could be read to include market rate units in a master planned community that includes both market rate and affordable components, which are often built by distinctly separate owners on different timelines. It could also be construed to apply to a multi-phased development, implying that an applicant cannot place Assisted Units into a second phase if the first phase didn’t already have Assisted Units. As HCD intends to define a Project based on the common financing of a grouping of units, we suggest that removal of the “of which the Project is a part” so to avoid unintended applications. Alternatively, we suggest restricting the definition of a Project to be any units with common financing, the same owner, and built at the same time. Mid Pen Housing</p>	<p>See response to above comment. The provisions of Sections 202 (e) (1) and 301 (a)(10) have also been clarified to exclude market rate components from the integration requirement.</p>
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6	202 (e) Integration	<p>We support the concept of integrating NPLH units within a development and appreciate the Department’s interest in clarifying the requirement. However, we find that the proposed language creates additional ambiguity in general and complications for hybrid or phased projects in particular. The proposed language appears to say that NPLH units must be integrated across all phases of a multi-phase project or all components of a hybrid project, even when only one component or phase is receiving NPLH funds as allowed by Section 200(m). This is not possible from a financing perspective, as the non-NPLH phases or components have different income targeting and target population requirements. Nor is it possible from a timing perspective in multi-phased projects. Moreover, in hybrid developments the two portions are separate legal parcels and entities, further inhibiting the ability to spread units between the two components. Including this requirement will preclude hybrid developments from submitting applications. We recommend that the language be limited to hybrid projects in which both components receive NPLH funding. If the Department has some other intention with this language, it is not clear and we would welcome a discussion of how the language could be clarified. We also note that the “notwithstanding” clause in paragraph (3) now needs to refer to paragraph (1) to reflect the renumbering of the paragraphs. California Housing Partnership Corporation</p>	<p>See response to Comment #4. The Department believes that a successful hybrid Project can still have Units for Extremely Low Income tenants within the 9 percent component, as well as target population requirements that would not preclude a tenant meeting NPLH target population characteristics, or sharing similar characteristics to NPLH tenants, from residing there, regardless of whether there is NPLH funding in that 9% component of the Project</p>
7	202 (e) Integration	<p>Remove the limit of NPLH to no more than 49% of a building (Article 2, Section 202(e)(2)). While integration can be an effective model, a building with a unified mission can also be an effective way to help previously homeless and mentally ill residents to thrive in their homes. It would be beneficial to give applicants the opportunity to propose the ratio of NPLH units within a development that it sees fit for the particular site and community. Resources for Community Development</p>	<p>The Department will retain this limit. For Projects over 20 Units it is important that there be a mix of population-types for both reasons of integration and Project financing, The 49 percent limit is one way to try to achieve this. In addition, for many Projects/localities without Article XXXIV authority, a 49% limitation is often what is needed to comply with Article XXXIV.</p>

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<p>8</p>	<p>203(e) Supportive Services Plan</p>	<p>The required documentation provided by the Lead Service Provider (or LSP, which is often the County partner) in order to meet the Supportive Services Plan application requirements increased enormously between the first and second rounds of competitive NPLH funding. Specifically, the new components added to the Supplemental Application's Supportive Service Plan - Part II. Lead Service Provider (LSP) Detail, Part III. Supportive Services, Part V. Staffing Detail, and Part VI. Supportive Services Budget exponentially increased the application submission requirements that originate/tie back to Section 203(e) of the Guidelines. For small and medium sized Counties with limited administrative staff capacity, this large volume of documentation is burdensome. Additionally, it is unclear if or how this information is reviewed for scoring purposes. We believe that the commitment by the LSP to supportive services necessary to adequately serve NPLH residents is effectively and comprehensively provided by two documents: (1) The MOU between the County, the project owner, other service providers, and the property manager (Section 203(f)), and (2) The LSP Commitment Letter. We suggest altering the timing for the provision of the documentation required as part of Section 203(e) from the application stage to instead be provided prior to execution of the Standard Agreement. -Mid Pen Housing</p>	<p>The Department acknowledges that the information required in the NPLH Supportive Services Plan has increased significantly since the program has started using a standardized Supportive Services Plan (SSP) form similar to what is being used in the Department's other supportive housing programs. The standardization in the SSP form was necessary in order to adequately and fairly evaluate the sufficiency of Supportive Services Plans being submitted to the Department. Submission of the SPP is an application threshold requirement; however, for scoring purposes, the Department will only look at the supportive services information requested on the Scoring worksheet of the NPLH Supplemental Application form corresponding to Sections 205 (e) and 205 (f) of the program Guidelines. The Department also understands that most Projects will not have fully developed Memorandums of Understanding or other written agreements regarding supportive services roles and at application stage, and we will likely request updates prior to or shortly after permanent loan closing; however, it is necessary to receive draft documents at application stage in order to evaluate County capacity and planning efforts for their NPLH Projects related to supportive services</p>
<p>9</p>	<p>203(e) Supportive Services Plan</p>	<ul style="list-style-type: none"> Section 203 (c) (6). Add “enrolling in CalFresh or other food security program” as a required service for tenants - A major concern is the provision of food security, which according to the amended guidelines is “not required to be made but are encouraged to be part of a County’s support services plan.” For the more than 151,000 Californians experiencing homelessness, food is a not a guarantee. Homeless individuals eat fewer meals a day, lack food more often, and have inadequate diets and poorer nutrition in comparison to house populations. Hunger and malnutrition further worsen other health conditions. Research has found many homeless individuals are eligible for food stamps and nutrition-related programs. The interplay between health and food should be a clear indicator that persons experiencing homelessness and SMI also deserve food security to succeed in their housing transition and live a quality life. Section 203 (c) (6) should read, “Benefits counseling and advocacy, including assistance in accessing SSI/SSP, enrolling in Medi-Cal, enrolling in CalFresh or other food security programs.” (Cont. below) 	<p>No additional changes to the Guidelines will be made on these issues at this time. Although not specifically named in 205 (c) (6), the Department believes that many Supportive Services Plans are incorporating assistance accessing CalFresh benefits within the requirement to provide benefits counseling and advocacy. Persons enrolled into MediCal are typically also enrolled in CalFresh. In addition, the Department believes that most NPLH-funded Projects will offer free access to internet or other communication devices as part of use of community facilities, such as on-site computer rooms which most affordable housing developments have incorporated into their construction or rehabilitation. Access to clothing and phone services is also important, and the Department believes that if needed, this will be incorporated into individualized tenant supportive services plans developed by County behavioral health departments or their lead service provider.</p>

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<p>9 Cont.</p>		<ul style="list-style-type: none"> • Section 203 (c) (8). Add “support in access to clothing and communication tools (Internet/phones)” as a required service for tenants. <p>Access to clothing and tools for communication (Internet/phone) should be a require supportive service. California law prohibits the exposure of the naked body and can result in serious repercussions, such as county jail or sex offender registration. The Housing First model recognizes the importance of providing people experiencing homelessness with basic necessities. The right to adequate clothing is a necessary human right and recognizes a people experiencing homelessness as valued and respected. Persons experiencing homelessness and negative health outcomes can benefit from having readily accessible tools for communication. A significant barrier for healthcare providers and case managers is communicating quickly and frequently with their homeless patients and or clients. Research indicates Internet and phone access and utilization can alleviate these challenges. Providers and case managers can schedule follow-up appointments and check-in on the wellbeing of tenants if they have a means of communicating. Tenants can also apply for jobs, sign-up for Medi-Cal, locate public transportation, and socialize all through Internet and phones. The addition of Section 203 (c) (8), “Support in access to clothing and communication tools (Internet/phone)” addresses these concerns and eases the burden for staff providing supportive services to tenants California Primary Care Association</p>	<p>See above response.</p>
<p>10</p>	<p>205 (e) - Supportive Services</p>	<p>We encourage HCD increase the point allocation under subsection 205(e) to at least 50 points. Through the supportive services offered by NPLH, tenants will be provided with tools and care that are necessary in helping individuals become independent functioning members of society. Without these services, NPLH would simply be offering housing services. It is surprising supportive services only accounts for 20 points out of 200 in the review of applications for the competitive allocation funding. Supportive services are a crucial part of providing supportive housing and the points should reflect their value. California Primary Care Association</p>	<p>Over the past year, NPLH has made extensive changes to its Supportive Services Plan (SSP) form submitted with the NPLH application to enhance the quality of the evaluation of these SSPs. In addition, these SSPs are now being evaluated by an outside consultant experienced in the supportive services needs of the NPLH Target Population. Submission of a quality SSP is a requirement for a Project to move forward. Rather than make changes to our Supportive Services scoring criteria or rating points, the Department believes that the changes we have made to date will be more effective in ensuring that high quality SSPs and supportive services teams are put together by Counties that seek NPLH funds.</p>

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<p>11</p>	<p>Section 207(f) Transition reserves</p>	<p>The Department should eliminate any transition reserve requirement for projects with rental subsidies. In the decades of their existence, no Section 8 contract (PBRA or PBV) or USDA 521 Rental Assistance contract in California has been terminated due to a failure of federal appropriations. These decades of successful experience have substantially altered the capital markets’ view of risk posed by subsidy contracts, and it is now commonplace for lenders working in California to structure debt leveraged by Section 8 without requiring capitalized transition reserves. HCD is now a notable outlier in this regard, contributing to higher project costs and greater public subsidies per unit at a time when the state is focused on reducing both of these. HCD’s transition reserve requirement results in the long-term sequestration of capital dollars that should be deployed to produce more affordable units today. Worse still, the value of these large transition reserves may be captured by LIHTC investors when they exit the ownership entity after 15 years. Many investors require payment for their share of all reserves upon exit, even if those reserves are controlled by HCD or other parties and cannot be liquidated.(Cont. below.)</p>	<p>NPLH transition reserve requirements are also triggered by exhaustion of the NPLH-funded Capitalized Operating Subsidy Reserve (COSR), and not just by expiration of Project-based rental assistance contracts. Since the COSR is sized to expire before the end of the NPLH loan term, it is generally prudent for NPLH Projects to have transition reserves, in case the Project is unable to find other sources of funding in sufficient time to replace the COSR (or project-based rental assistance), in order to avoid immediately raising rents, which may prevent NPLH tenants from continuing to reside in the Project. Transition reserves may be funded over time from annual Project cash flow; however, the Department understands the concerns expressed by the commenter, and is continuing to explore other options for funding transition reserves.</p>
<p>11 Cont.</p>		<p>Large transition reserves are a tempting target, and banking capital dollars today to hedge against a risk that has been demonstrated to be remote only for those funds to be paid to an investor years later is not an outcome anyone should seek or abet. We understand that HCD is considering eliminating transition reserves if it can create a transition pool. While we see benefit in a pool, we strongly recommend delinking these two decisions and eliminating the transition reserve requirement immediately. California Housing Partnership Corporation</p>	<p>See above response.</p>

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<p>12</p>	<p>Section 209(a) and (b) COSR limits</p>	<p>While establishing lower capital loan limits for NPLH projects utilizing 9% tax credits makes sense because they need less gap funding to fund development due to additional tax credit equity, the operating deficits of 9% and 4% developments are similar and therefore should not be subject to different capitalized operating subsidy reserve (COSR) limits. Moreover, the difference was originally created to push applicants towards utilizing non-competitive tax-exempt bonds and 4% credits. Now that CDLAC is competitive, this rationale no longer exists. We recommend that the Department standardize COSR limits consistent with paragraph 209(b) for 4% projects. In its response to similar comments for the 2019 NPLH guideline changes, the Department stated, “Since the per-unit subsidy limits for capital are increasing this year to conform to MHP, the Department will wait to consider any other changes to the COSR per-unit calculation formula until the impact of increases to the capital limits can be further evaluated.” We believe that the time has come and there is no longer any rationale to maintain lower COSR limits for 9% projects. California Housing Partnership Corporation</p>	<p>The Guidelines have been amended so that the COSR per-Unit subsidy limit for 9% Projects is calculated using the same formula as the COSR per-Unit subsidy limit for all other Projects. The COSR per-Unit subsidy limit for all Projects will now be the same.</p>
<p>13</p>	<p>209(i) Capitalized Operating Subsidy Reserve (COSR)</p>	<p>While the guidelines specify that each ongoing annual COSR disbursement will be based on the results of an annual bifurcated audit of the prior operating year, COSR distributed in the first year will be based on the Department’s “most recent underwriting of the Project.” We ask that the Department specify in the guidelines when the first COSR disbursement can be distributed. We recommend that the Department allow the first COSR disbursement at conversion of the project’s permanent financing to prevent funding delays that may lead to an operating shortfall in the first year. At the end of the first year and upon completion of the first independent bifurcated audit, the Department would require a reconciliation of the COSR funds based on the audit. In addition, we request that the Department clarifies in the Guidelines how interest accrues on the COSR loan; whether the interest accrues on the total COSR loan or only on the funds that have already been disbursed to the project. Eden Housing</p>	<p>The Department is currently planning to disburse the Year 1 COSR as suggested by the commenter; however, the specific details of the COSR disbursement process will be finalized later this year as part of a formal disbursement agreement to be developed as part of the Project's package of loan/Perm Financing documents. Pending legislative changes may also change the way interest is calculated on the NPLH Loan. Given the specific nature of these issues, they are best addressed in the Permanent Financing package of documents rather than the Guidelines.</p>

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14		<p>It has come to our attention in closing NPLH deals with COSRs that the Department intends to provide no subsidy for the first few months of operation prior to the project's first full fiscal year, that the Department will disburse 12 months of subsidy at conversion to permanent financing for the year in which the conversion occurs based on the Department's underwriting of the project, and in subsequent years to disburse funds only after the audited close of any fiscal year, as opposed to at the beginning of the fiscal year in which the funds will be needed. All of these decisions require owners to cover significant operating deficits over the entire COSR period. This is a very heavy burden for thinly capitalized special needs developments and results in developers having to create a costly additional reserve to cover these lags in HCD distributions. Moreover, this is wholly inconsistent with how CalHFA disbursed COSRs under the Mental Health Services Act (MHSA) Housing program on which NPLH is largely based. We strongly encourage the Department to specify in the guidelines the use of the MHSA COSR distribution model that covers the first few months of operation and disburses funds at the beginning of each fiscal year with a reconciliation at the end of the year (see Sections 6, 8, and 9 of the attached MHSA COSR Agreement). This change is critical to the cost and on-going viability of NPLH projects. California Housing Partnership Corporation</p>	<p>The period of time between initial rent-up and permanent financing conversion will not be covered by the NPLH Capitalized Operating Subsidy Reserve (COSR) because the Project cannot incur expenses covered by the COSR until close of its NPLH Loan at the conversion to Permanent Financing. To permit otherwise would likely mean that the COSR will be exhausted prior to expiration of the 20-Year term. After advancing the Year 1 COSR disbursement following the close of the NPLH Loan, future disbursements will be based upon submission of a bifurcated annual year-end audit which substantiates the actual deficit incurred attributable to the NPLH Assisted Units for costs which are eligible to be covered through the COSR. Since annual disbursements will be capped, typically at no more than 5 percent per year, disbursements received will likely not vary significantly from year to year; hence, the consequence to the Project of receiving a disbursement made on the basis of an annual projection or an annual reconciliation from the prior year should not be significant. The specific details of the COSR disbursement process related to the timing of the annual disbursement and reconciliation from the prior year, among other things, will be set forth in the Department's NPLH COSR Agreement.</p>
15	215 Legal Documents	<p>To help facilitate a timely construction loan closing, we ask that the Department state in the Guidelines that the standard agreement will be issued to the sponsor no later than 60 days following the date of the Department's award letter to the project. Eden Housing</p>	<p>Thank you for your comments. The Department recently transitioned to a process where we will endeavor to issue Standard Agreements no later than 90 days after award issuance, but depending on individual Project closing timelines/needs, this timeframe may vary. Notify your NPLH Program Representative of your anticipated Project closing date if you think the Standard Agreement will be needed sooner than 90 days from award issuance.</p>

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16	218 Defaults and Loan Cancellations	<p>We never anticipate that our County partners will default on their obligation to provide supportive services. However, should a Project's partnership be in default due to a County failing to meet its obligation, this could put the rest of the project's financing in jeopardy. We ask the Department clarify this in the Guidelines, stating that it will not foreclose on the NPLH loan and will work with the Borrower to revise the Services Plan should the County fail to meet its obligations to provide services.</p> <p>Eden Housing</p>	<p>Thank you for your comment. This issue will be addressed in the documents executed with the Department at the close of Permanent Financing.</p>
17	Other - County Caps	<p>The County of Orange continues to believe in the need for the California Department of Housing and Community Development (HCD) to find geographic balance in the awards of NPLH Competitive Funds stated in our March 25, 2020 letter to HCD. Since the letter Round 2 funds have been finalized resulting in none of County's nine projects receiving awards. Through the first two rounds of funding Southern California Large Pool counties have received only 21% of the funding with Northern California Counties receiving 79% of the Large County pool of funds. The County of Orange believes a geographic balance can be achieved.</p> <p>Therefore, we continue to recommend the following:</p> <ol style="list-style-type: none"> 1. HCD should have some geographic consideration and a cap placed on the total funding a County can receive under NPLH for more equitable distribution of funds. 2. HCD should consider increasing the County's NPLH Non- Competitive Funding Allocation. This increase would allow projects in the County's supportive housing pipeline to secure the additional capital funding and Capitalized Operating Subsidy Reserves (COSR) they need to support units that are designated to serve the same vulnerable population. These projects can then use the NPLH Non-Competitive funds as leverage in future NPLH Competitive Rounds. (Cont. below) 	<ol style="list-style-type: none"> 1) At this time, the Department will not be implementing County caps on the number of applications that can be funded. Leverage and Readiness are critical factors in determining which Projects get selected within the Competitive Allocation. Currently, Southern California Counties within the Large County allocation have over \$14 million in Noncompetitive Allocation (NCA) funds that have not been utilized as leverage for Projects submitted within the Competitive Allocation. The Department encourages all Counties with uncommitted NCA funds to use these funds and other available sources to support Projects within their local affordable housing development pipeline that will score well in the competition for funds 2) The Noncompetitive Allocation is a one-time allocation, with nearly 75% of the available funds already committed to Projects. The Department is required to redistribute any uncommitted funds to Projects through the Competitive Allocation. This redistribution through the Competitive Allocation formula will occur prior to finalizing our Round 4 awards. 4) The Department has no authority to implement additional set-asides through the NPLH Program. We encourage disaster area Counties to seek other available funds for this purpose.

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17 Cont.		<p>3. HCD should consider implementing a set-aside or separate allocation of funding for disaster area counties so that projects can leverage the additional funding that is currently available to get their projects built. The Further Consolidated Appropriations Act, 2020 (FCAA) provided the Tax Credit Allocation Committee (TCAC) with additional nine percent (9%) credits totaling the 2017 and 2018 nine percent (9%) federal credit allocated to projects in certain disaster areas, which includes 13 of California's 58 counties - Orange being one of these counties. To address the housing need, TCAC is proposing to allocate these FCAA Federal Credits to eligible projects located in these disaster area counties (Orange County Community Resources)</p>	See above response.
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