



## California Department of Housing and Community Development

### 2017 Uniform Multifamily Regulations

#### Frequently Asked Questions ((FAQ), 12/26/17)

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After approval from the Office of Administrative Law on November 8, 2017 for both the new regulations and request for early effective date, the new Uniform Multifamily Regulations (UMR) are **effective as of November 15, 2017**.

To help navigate through the changes to the UMRs, the Department is providing these Frequently Asked Questions (FAQ). These FAQs are not exhaustive; therefore, if you believe there are questions the Department should include, please email them to [UMR@hcd.ca.gov](mailto:UMR@hcd.ca.gov) for Department review and possible inclusion.

Please use the links below to read FAQs pertinent to each topic:

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## **Amending Standard Agreements**

### **Are the cost reasonableness tests and negative points held against projects awarded funds prior to the effective date of the 2017 UMRs?**

*If your Standard Agreement references the 2010 UMRs, the provisions do not apply to your project. However, if your Project has an open Standard Agreement and decides to have the 2017 UMRs apply, or, if the standard agreement has not been executed, then the provisions will apply. Submit your questions regarding cost reasonableness to [UMR@hcd.ca.gov](mailto:UMR@hcd.ca.gov).*

### **Are Standard Agreements required for ALL HCD loans and grants?**

Yes.

### **Can I amend my Standard Agreement if it is already expired?**

*If your Standard Agreement is expired, you cannot simply amend it to have the 2017 UMRs apply. Existing projects with an expired Standard Agreement must go through a Restructuring Transaction meeting the requirements of Section 8317(b). To find out more about how the UMRs apply to projects with expired Standard Agreements visit HCD's website at <http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>*

### **How do the new UMRs apply to my HCD program?**

*If not specifically mentioned in Section 8300, then the applicability of the new UMRs to programs such as AHSC can be found in each programs' individual guidelines.*

### **How long will it take to amend existing Standard Agreements?**

*The Department is prioritizing requests based on the date of a project's HCD loan closing.*

### **If I amend my Standard Agreement in December is it retroactive to the effective date of November 15, 2017?**

*No. The UMRs will not apply to your project until recordation of the new Regulatory Agreement by your County Recorder's office.*

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**Is it possible for the 2017 UMRs to apply to my existing project?**

*The 2017 UMRs will only apply to projects that already have an earlier version of the UMRs. Yes. Amending your Standard Agreement and Regulatory Agreement will cause the 2017 UMRs to apply. If you do not, then the 2010 UMRs still apply.*

**Once I find out if my project is eligible, what do I have to do to have the 2017 UMRs apply to my existing project?**

*For instructions on how to have the UMRs apply, visit HCD's website at <http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>*

**What are the required processes to apply the 2017 UMRs to my project?**

*You can view more information regarding the processes on HCD's website at the following: <http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>*

**Where can I find a list of fees for restructuring transactions under Section 8317?**

*Per 8317 of the UMRs, these fees are on a case-by-case basis, but by any means must not exceed the allowable fees charged for the Loan Portfolio Restructuring Program transactions (AB 1699). Please contact the Department for estimate of specific fees related to your transaction.*

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## **Affordable Housing and Sustainable Communities and Infrastructure Infill Grant (AHSC/IIG)**

### **Do the UMRs apply to the current AHSC NOFA with applications due in January 2018?**

*No. The current Round 3 AHSC guidelines use the 2010 UMRs, which are the basis for all Round 3 underwriting. After underwriting Round 3 applications underneath the 2010 UMRs, the Strategic Growth Council (SGC) may allow awarded projects to abide by the 2017 UMRs. Please see SGC's December 4, 2017 AHSC Memorandum [here](#).*

### **Will the 2017 UMRs apply to the IIG grant as well?**

*Yes, but only as referenced in the IIG grant regulations.*

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## **Applicability of the 2017 UMRs to projects**

### **Is it possible for the 2017 UMRs to apply to my existing project?**

*The 2017 UMRs will only apply to projects that already have an earlier version of the UMRs and qualify per 8300(b). If your Project applies, then yes amending your Standard Agreement and Regulatory Agreement will cause the 2017 UMRs to apply. If you do not, then the prior UMRs still apply.*

### **Can I choose which Sections of the UMRs apply to my existing project?**

*If you sign or amend your standard agreement, the 2017 UMRs apply in their entirety, subject to which HCD loan program funding has been awarded.*

### **Do the 2017 UMRs apply to Native American Lands?**

*Yes. You can locate pertinent regulations in Sections 8301(l), 8303(a)(1), 8305(c), 8307(e), 8308(e), and 8309(b)(4).*

### **If I have a proposed or existing scattered sites project, will the new UMRs apply?**

*Section 8303 of the 2017 UMRs, provides a list of requirements that scattered sites projects must comply with for the 2017 UMRs to apply.*

### **If we refinance a permanent loan and a new subordination is required, does that trigger #3?**

*Yes.*

### **What impact will the 2017 UMRs have on my project going forward?**

*Each project is different, so it is difficult to ascertain how the new UMRs will affect individual projects. HCD recommends speaking to your counsel, especially if you are amending your existing Standard Agreement. You can also contact your HCD Representative to discuss the impact to your specific project.*

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**Will HCD re-underwrite my loan in order for the 2017 UMRs to apply?**

*Certain UMR regulatory provisions, such as changes to “Cash-Flow,” may cause re-underwriting. Please contact your HCD representative to discuss the impact to your loan or specific project.*

**What are the processes for applying the 2017 UMRs to my project?**

*You can read about the required processes to apply the 2017 UMRs on HCD’s website at <http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>*

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## **Asset Management/Partnership Management**

**If Asset management or Partnership Management Fees continue to accrue as liabilities for over 3 years, will any of the portion over 3 years have the priority?**

*No. After the three years, AMF/PHF fees may possibly accrue on the Balance Sheet but may not be paid out of the Operating Cash Flow, but rather out of the Borrower Distribution.*

**If we amend our regulatory agreement to take advantage of the 2017 UMRs, can we collect the higher Asset Management fee from the prior three fiscal years?**

*No. The new UMR's will be effective at recordation of the amended Regulatory Agreement and forward.*

**In what year does the escalator apply to Asset/Partnership Management Fees?**

*Asset management/partnership management fees are set at \$30,000 starting in Year 2016 and increase 3.5% each subsequent year. For Year 2017, the escalated asset management / partnership management fees would be \$31,050. For Year 2018, the escalated asset management / partnership management fees would be \$32,137. (However, these fees will be prorated as of date of recordation of loan documents)*

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## **Definition Clarifications**

### **Define “Original Principal Loan Amount.”**

*The Original Principal Loan Amount” is the final amount of the permanent conversion loan.*

### **What if another lender uses a different definition for “Chronic Homelessness?”**

*When there is a conflict, the most restrictive controls. For us to be able to make the allowance, it needs to conform to HCD’s definition. However, you also need to comply with both.*

### **Does the definition of “Special Needs Populations” include HOPWA beneficiaries?**

Yes, HIC/AIDS is one of the defined Special Needs Populations.

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## **Developer Fees and Deferred Developer Fees**

### **Do you have an example of how to calculate the maximum allowable Developer Fee?**

*If you have questions regarding Developer Fee Calculations, please speak to your HCD representative. Please visit HCD's website [here](#) for contact information, or refer to this FAQ document under the "[Contacting HCD for questions regarding your project](#)" link.*

### **If I already closed my HCD permanent loan, will the 2017 UMRs allow retroactive payments of Developer Fees or Deferred Developer Fees under Section 8312?**

*No. The only way a project can benefit from the higher fees under Section 8312, is if it has not yet closed its HCD permanent loan.*

### **Will HCD recalculate the Developer Fee if there are cost savings during construction?**

*No. We are not allowing recalculation of developer fees if the loan is closed and you are applying to have the 2017 UMRs apply. The UMRs are for loans going forward, not retrospectively. There are choices of what to do in Section 8313.1 if there are cost savings, and increasing the Developer Fee because of cost savings resulting in surplus is not one of the choices.*

### **Do Deferred Developer Fees count as part of the cost reasonableness cap?**

*The total developer fee, including deferred developer fee, is considered part of the development cost.*

### **If there are cost savings during construction, or surplus funding from a development source, will HCD allow the surplus funds to be recalculated as part of the Developer Fee?**

*No. We are not allowing recalculation of developer fees if the construction loan is closed. The UMRs are for loans going forward, not retrospectively. There are choices of what to do in Section 8313.1 if there are cost savings, and increasing the Developer Fee because of cost savings resulting in surplus is not one of the allowable uses.*

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## **Loans currently in closing**

### **What happens if I have already signed my standard agreement but my HCD loan is not closed?**

*You must amend your Standard Agreement prior to closing your permanent HCD loan or grant. Your new loan documents will reference the 2017 UMRs.*

### **What happens if my HCD loan closed before the effective date of the UMRs?**

*If your Standard Agreement has not yet expired, and you do not want the 2017 UMRs to apply, then you do nothing. If you want them to apply, you must amend your Standard Agreement and Regulatory Agreement.*

### **What if our loan must close before the end of the year, but the Department does not have our Standard Agreement ready?**

*We cannot guarantee the timing of closings, but are prioritizing closing through the end of the year for Projects who require by TCAC and CDLAC to close construction by 12/31/17 and Projects that need to close construction financing by 12/31/17 due to the proposed Federal tax reform.*

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## **Replacement Reserves**

### **Am I required to establish a new replacement reserve account after the 2017 UMRs apply to my existing project?**

*The 2017 UMRs gives HCD the authority to require the establishment of a replacement reserve account, and the funding amounts to such an account but does not require a “new” one as long as there is an existing Replacement Reserve. HCD may also require a Third Party Physical Needs Assessment with a 20-year reserve analysis in order to set the funding amounts.*

### **Can I use Replacement Reserve Funds for improvements to the property, where those improvements are not specifically a repair or replacement of an existing component of the building? (The new improvement will lower maintenance expenses and improve property performance.)**

*On a case-by-case basis and with prior written Department approval, capital additions may be allowed to draw down Replacement Reserve funds.*

### **Can I withdraw from the Replacement Reserve if they are not Capitalized expenses?**

*HCD has an eligible expense to be paid from the Replacement Reserve table, which details allowable uses of the reserve. Any amount withdrawn from the Replacement reserve that exceeds the amount capitalized during the year will be added into cash flow.*

### **Can we use Replacement Reserves for common area furniture and equipment?**

*We are not changing our internal policy. However, you should contact your representative if you are going to capitalize an item that is not allowable on our internal policy table, since we can waive our policy upon Department approval. Our policy and allowable expense table can be found at <http://www.hcd.ca.gov/grants-funding/already-have-funding/docs/AN16-02ReplacementReserveGuidelines.PDF>*

### **If our local Housing Authority does not allow the upgrading of capital items, how can we use the Replacement Reserve for repairs and replacement for items too costly for the operating budget?**

*HCD does not defer to local jurisdictions on use of the Replacement Reserve. Refer to the HCD reserve table for its use and send to the local jurisdiction as well if they have subordinated to HCD. It is possible that the most restrictive prohibitions would control.*

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**Will I be required to submit a PNA and/or replacement reserve analysis?**

*Not necessarily. On a case-by-case basis, HCD may require a PNA or reserve analysis, or may leave the replacement reserve in its current state.*

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## **Senior Lender Subordination**

**If an entity is both the Lender and an Affiliate of the Investor, does this mean HCD's Regulatory Agreement must be in senior position?**

*Yes. For example, If Wells Fargo is a partner in any respect and has any interest in the ownership structure the components of the sections apply.*

**If our organization loans funding to a Limited Partnership for rehab, and HCD agrees to subordinate, does that count as subordination to a senior lender?**

*No. An organizational loan that is not one senior or public lending source means that we will not subordinate to them.*

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## **Supportive Services Cost Limits**

### **Can Supportive Services Costs, allowable as Operating Expenses, accrue?**

*No. Because these costs are yearly limits, they do not accrue like AM/PM fees.*

### **Do Supportive Services Cost limits (starting in year 2017) increase at 2.5% annually starting in 2018?**

*Yes. Support Services Costs limits are set starting in Year 2017 and increase at 2.5% annually starting in Year 2018.*

### **If I already closed my HCD permanent loan, when will the 2017 UMRs (under Section 8314) allow Supportive Services Costs as eligible Operating Expenses?**

*Upon recordation of an amended Regulatory Agreement and forward.*

### **Regarding 8314(f)(1 and 2): Are staff supervision costs and administrative overhead costs included in the overall Supportive Services Costs limits, or in addition to the Supportive Services Costs limits?**

*The total Supportive Services Costs limits includes two “carve-out” amounts: (1) staff supervision costs may be no more than 10% of the cost of on-site staff salaries; and (2) administrative overhead expenses may be no more than 15% of the total Supportive Services Costs limit. For example: if the limit for Total Supportive Services Costs is calculated to be \$60,000 then the administrative overhead costs may be no higher than \$9,000 and the supervision costs may be no higher than 10% of the on-site staff salary.*

### **Under the new definition of Supportive Services, am I limited only to the activities listed in Section 8301(u)?**

*8301(u) defines allowable Supportive Services costs. However, similar costs are approvable by the Department, as stated in Section 8301(u)(2).*

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## **Contacting HCD for questions regarding your project**

*Whom you contact for more information depends on whether you are current applicant awaiting funding, or an existing borrower. Please follow the link to find out which department you contact for your specific transaction: <http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>.*

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