

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

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DATE: March 30, 2022

TO: Interested Parties

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

Handwritten signature of Jennifer Seeger in cursive.

Geoffrey Ross, Deputy Director
Division of Federal Financial Assistance

Handwritten signature of Geoffrey Ross in cursive.

SUBJECT: Negative Points Policy

ADMINISTRATIVE NOTICE: Notice Number 2022-01

This Administrative Notice establishes a formal written notification of administrative guidelines and policies that affect the operation of Department programs. This format is used to identify, clarify, and record administrative guidelines and interpretations of public interest.

This advisory notice sets forth the California Department of Housing and Community Development's (HCD/Department) Negative Points Policy applicable to all state and federal funding programs - both loans and grants - administered by HCD's Divisions of State and Federal Financial Assistance. A complete list of applicable programs, which may be amended from time to time as new programs are designed and implemented, is included as Attachment A. **Negative points will be calculated based on the criteria outlined below and will be applicable to all Notices of Funding Availability issued on or after the date of this notice.**

Negative points will be assessed, as appropriate, to the applicant or joint applicant for the prior 5-year period from the date of the applicable Notice of Funding Availability, except where noted below.

Background

In an effort to proactively address California's ongoing affordable housing crisis and be a responsible steward of public funds, the Department has established the following comprehensive policy for determining negative points across various Department funding programs.

Through this negative points policy, the Department ensures that the limited critical funding resources available are directed to entities that demonstrate the ongoing capacity to successfully operate and manage affordable housing developments or implement programmatic activities and successfully deliver of the Department's mission to promote safe and affordable homes. Negative points will be assessed upon receipt of an application for HCD funding based on the criteria below and applicants will have an opportunity to appeal the assessment of any negative points prior to the finalization of rating and ranking and/or award recommendations. In addition to the negative points assessed based on the criteria below, the Department reserves the right, in its sole discretion, to revoke an entity's eligible sponsor or applicant status at any time based on documented serious issues with the operation, maintenance or implementation of project or program funds.

Section 101. Definitions

In addition to the definitions found in the Uniform Multifamily Regulations (UMRs) (25 CCR 8301) and the Multifamily Housing Program (MHP) Guidelines, the following definitions shall apply. *Please note: capitalized terms used throughout this policy that are not defined below shall have the same meaning in the UMRs and/or MHP Guidelines.*

- (a) “Control” has the same meaning as described in 25 CCR 8313.2(a)(3)
- (b) “CRP” means the Department’s Compliance Resolution Program.
- (c) “Program Documents” means the Standard Agreement, Promissory Note and Regulatory Agreement and any other documentation meant to support the monitoring and compliance of project or program activity.
- (d) “Responsible Party” means the grantee, Sponsor, or borrower, including principals or agents of the Sponsor or borrower, of a project subject to the sanctions in this policy.
- (e) “Restructuring” means one or more of the following: extension of the Department’s loan term (or terms, if there are multiple Department loans), subordination of the Department’s loan or loans to a new senior loan or loans, and/or Low-Income Housing Tax Credit investment.

Section 102. Negative Point Assessments

- (a) Department-assisted multifamily projects or program activities under the control of the Responsible Party which have had a detrimental effect on the Project/program activity or the Department’s ability to monitor a project or program activity shall be used as the basis for assessing point deductions as determined solely by the Department.
- (b) Negative point assessments for applications submitted to a Department funding Program shall be applicable as of the date of the NOFA application deadline, or the date the deficiencies are first identified, if those deficiencies occur between the application due date and the date of the award announcement.
- (c) Any negative point assessment shall reduce the Responsible Party’s score by the same amount for every future application to any of the Department’s Notices of Funding Availability for any Department funding Program for five years following the date upon which the occurrences or deficiencies occurred, or where possible, were corrected, as determined by the Department.
- (d) Two points may be deducted for each of the following occurrences, except as noted below, with a maximum deduction of 10 points.
 - (1) Failure to submit regularly (e.g., annual, bi-annual, or quarterly) required reports under any Department Program within 90 days of the date the report is due to the Department;

- (A) The applicant may clear any reporting deficiencies prior to, or concurrent with, the application due date as stated in the NOFA for which the applicant is applying. After the issuance of the NOFA, any such submittals to cure outstanding report submittals prior to, or concurrent with, the NOFA due date will be calculated at one point per occurrence.
- (2) Failure to submit a timely annual fiscal audit or Schedule of Rental Income documentation by the due date.
- (e) Five points may be deducted for each occurrence or event in the following categories, except as noted below, with a maximum deduction of 10 points per category and a maximum deduction of 50 points per Responsible Party per application:
 - (1) Failure to meet performance deadlines for encumbrance and/or liquidation of funds pursuant to the applicable Standard Agreement;
 - (2) Failure to meet performance requirements for construction commencement and construction completion set forth in the applicable Standard Agreement;
 - (A) For Projects funded under the Affordable Housing and Sustainable Communities Program where an extension is requested and approved by the Executive Director of the Strategic Growth Council before the milestone dates indicated in the Standard Agreement, negative points shall not be assessed;
 - (3) Failure to provide the number of assisted units as required by the Program Documents without prior approval by the Department.
 - (4) Failure to restrict unit occupancy to a Special Needs or Supportive Housing Population or other target population as required by the Program Documents;
 - (5) Failure to provide required supportive services to a Special Needs or Supportive Housing Population or other tenants of the Project as required by the Program Documents;
 - (6) Failure to comply with applicable provisions of Welfare and Institutions Code Sections 8255 through 8257 relating to Housing First policies;
 - (7) Failure to adequately maintain a Project;
 - (8) Failure to correct noncompliance issues within the timeframe specified in the Department's Site Monitoring Report or other reports and letters issued by the Department;
 - (9) Failure to timely make required payments to the Department. Negative points assessments may be made as follows:
 - (A) One negative point where the payment is 60 days late;
 - (B) Two negative points where the payment is 90 days late;

- (C) Five negative points where the payment is 120 days late.
 - (10) Charging tenant Rents greater than Rents allowable under the Department Program;
 - (11) Implementing Rent increases prior to receiving the Department's written approval, where such approval is required;
 - (12) Use of Department-controlled reserve funds in a manner contrary to Program requirements or without prior Department approval, or failure to deposit reserve funds as required by the Department;
 - (13) Failure to comply with the terms of a CRP workout;
 - (14) Failure to meet Disabled Veteran Business Enterprise requirements under the Veterans Housing and Homelessness Prevention Program;
 - (15) Failure to comply with the requirements set forth in Government Code Section 65863.10 relating to preservation notices;
 - (16) Sponsor-initiated disencumbrance of funds due to a return of funds after award has been made;
 - (17) Other significant violations of the requirements of Department Programs, as determined solely by the Department, assessed based on the severity and length of time of the violation.
- (f) Up to 20 points may be deducted for each occurrence or event in the following categories:
- (1) Removal, or withdrawal while under the threat of removal, as general partner as a consequence of failing to comply with contractual obligations, including the limited partnership agreement;
 - (2) A lender has recorded a Notice of Default against the Project;
 - (3) The ratio of the Project's total eligible basis to its total adjusted threshold basis limit, calculated based on actual development costs following completion of construction and in accordance with 25 CCR 8311, exceeds 170 percent or the amount stated in the applicable program guidelines/NOFA. The penalty assessed shall be 20 points.
 - (4) During the permanent loan closing process, failure to adhere to Program occupancy restrictions, including income limits, Rent limits, minimum or maximum number of persons in the household, or occupancy by target populations. In cases where reducing or eliminating occupancy restrictions to reflect actual occupancy status at the time of loan closing would have resulted in a reduction of points awarded at time of application, the penalty assessed shall be a minimum of five points or an amount equal to what the point score reduction is, whichever is greater. In cases where reducing or eliminating the occupancy restrictions to reflect actual occupancy status at the time of loan closing would not have resulted in a reduction of points awarded at the time of application, the penalty assessed may be five points.

Section 103. Defaults and Workouts

- (a) The following negative point assessments apply only to those Department-assisted Projects assessed negative points under Section 102 hereof where the Project is subsequently referred to CRP or Legal Affairs for ongoing defaults or compliance issues. Points assessed under this Section 103 shall not be a duplication of points assessed under other sections hereof but shall be additional sanctions for continuing or worsening noncompliance and/or defaults.
- (b) Negative points assessments for applications to a Department funding Program shall apply as of the date of the application submittal deadline or the date the deficiencies are first identified, whichever is later. Additionally, any negative points assessment shall reduce the Responsible Party's score by the same amount for every future application to any of the Department's Notices of Funding Availability for any Department funding Program following the date upon which the occurrences or deficiencies were corrected, as determined by the Department. Negative points assessed pursuant to subparagraphs (1) through (5) of section (c) will be applicable for five years from the date of the event. Negative points assessed under other subparagraphs of section (c) will be applicable for 10 years from the date of the event.
- (c) Five points may be deducted for each occurrence or event in the following categories, with a maximum deduction of 10 points per category and a maximum deduction of 50 points per Responsible Party per application:
 - (1) CRP issues a Preliminary Notice of Default;
 - (2) Each subsequent year the Project remains in CRP due to ongoing defaults;
 - (3) Violations of the Department Program Documents committed while the Project remains in CRP;
 - (4) Violations of the Department Program Documents, whenever committed, initially discovered while the Project is in CRP;
 - (5) Failure to correct noncompliance issues within the timeframe specified in the Department's Preliminary Notice of Default;
 - (6) Misrepresentation of material facts related to the Responsible Party's compliance with the Department's Program Documents;
 - (7) CRP records a Notice of Default in the official records of the county in which the Project is located.

Section 104. Restructurings

- (a) Negative point assessments for applications submitted to a Department funding Program shall be applicable as of the date of the NOFA application deadline or the date the deficiencies are first identified if those deficiencies occur between the application due date and the date of the award announcement. Additionally, any negative points assessment shall reduce the Responsible Party's score by the same amount for every future application

to any of the Department's Notices of Funding Availability for any Department funding Program for five years following the date upon which the occurrences or deficiencies were corrected, as determined by the Department.

- (b) Five points may be deducted for each occurrence or event in the following categories, with a maximum deduction of 10 points per category and a maximum deduction of 50 points per Responsible Party per application:
 - (1) Failure to cooperate with the Department to bring the Restructuring to a close within one year of application, as evidenced by:
 - (A) Responsible Party's failure to respond to Department requests in a timely manner;
 - (B) Responsible Party's failure to produce documentation required to complete the Department's application.
 - (2) Misrepresentation of material facts related to the Responsible Party's application for a transaction.

Section 105. Program Funding Ineligibility

- (a) For applications to noncompetitive funding programs, Responsible Parties with 10 or more negative points as of the first day of the application period shall be ineligible for an award.
- (b) Any Responsible Party of a Project that has been foreclosed by HCD or any lender shall be ineligible to apply for Department funding for a period of 10 years from the date of the foreclosure, except as described in subsection (c).
- (c) Any Responsible Party convicted of fraud, embezzlement, money laundering, or falsifying documents shall be ineligible to apply for Department funding indefinitely.
- (d) Any Responsible Party that submits to the Department documents containing a misrepresentation of material fact, including documents submitted in connection with applications for funding or loan closings, Annual Reports, Schedules of Rental Income, or clearance of Monitoring Findings, may be ineligible to apply for Department funding for a minimum of two years, with the potential for indefinite ineligibility, as determined by the Department.
- (e) Any Responsible Party that submits to the Department falsified or forged documents shall be ineligible to apply indefinitely.

Section 106. Notification and Appeals

- (a) The Department shall notify the Responsible Party in writing within 90 days from the time the Department discovers a noncompliance issue that may result in an assessment of negative points on future applications for Department funding. This notice is not an official assessment of negative points and is not subject to appeal until the Responsible Party applies for Department funding and receives a negative points assessment as described in subsection (b) below;

- (b) If the Responsible Party applies for Department funding and is subject to negative points assessment or is determined to be ineligible for funding, the Director of the Department or their designee shall notify the Responsible Party in writing according to the timeframes set forth in the applicable NOFA. The notification shall include the reason for the determination of ineligibility or negative points assessment, the number of points assessed for each noncompliance issue, the total number of negative points assessed against the application, and instructions for submitting an appeal;
- (c) The Responsible Party may submit a written appeal to the Director or his/her/their designee. as specified in the notice provided pursuant to subsection (b) above;
- (d) Director or his/her/their designee shall communicate the disposition of the written appeal in writing to the Responsible Party pursuant to the timeframes set forth in the applicable NOFA. This disposition shall be final and may only be overturned by the Director of the Department or their delegated Authority.

Appendix A

Listing of Applicable Programs

Last Updated March 30, 2022

The following is a list of all programs implemented by the California Department of Housing and Community Development that are subject to the Negative Points Policy as adopted on March 30, 2022.

- Affordable Housing and Sustainable Communities (AHSC) Program
- CalHOME
- California Housing Accelerator
- Community Development Block Grant (CDBG) Program – non-entitlement HCD administered program only
- Community Development Block Grant – Disaster Recovery (CDBG-DR)
- Emergency Solutions Grants (ESG) Program
- Excess Sites Local Matching Grant (LGMG) Program
- Housing for a Healthy California (HHC) Program
- Home Investment Partnerships Program (HOME) – non-entitlement HCD administered program only
- HOME – American Rescue Plan (ARP)
- Homekey
- Infill Incentive Grant Program of 2007 (IIG-2007)
- Infill Infrastructure Grant Program of 2019 (IIG-2019)
- Joe Serna, Jr. Farmworker Housing Grant (FWHG) Program
- Local Housing Trust Fund (LHTF)
- Multifamily Housing Program (MHP)
- Multifamily Housing Program – Supportive Housing (SHMHP)
- National Housing Trust Fund (NHTF) Program
- Neighborhood Stabilization Program (NSP) – non-entitlement HCD administered program only
- No Place Like Home (NPLH) Program – HCD administered competitive and non-competitive allocations
- Office of Migrant Services (OMS) Program
- Permanent Local Housing Allocation (PLHA) Program
- Competitive Permanent Local Housing Allocation (PLHA) Program
- Pet Assistance and Support (PAS) Program
- Portfolio Reinvestment Program (PRP)
- Transit Oriented Development (TOD) Implementation Program
- Veterans Housing and Homelessness Prevention (VHHP) Program