



State of California  
Department of Housing and Community Development  
**Community Development Block Grant - Disaster Recovery**

**DR20 Disaster Recovery Multifamily Housing Program  
Policies and Procedures Manual**

[Version 1.3](#)

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## Section 1. General

### 1.1 Purpose and Scope

The State of California Department of Housing and Community Development (Department or HCD) is the lead and Responsible Entity for administering the CDBG-DR funds (DR MHP Funds) allocated to California by the U.S. Department of Housing and Urban Development (HUD). DR-MHP Projects are funded to assist with meeting the unmet rental housing need, including the needs of individuals displaced from rental homes and individuals who became homeless as the result of the disasters. Multifamily Projects include development of new rental housing units in apartment complexes or mixed-use developments.

In 2020, California experienced the largest and most destructive wildfire season in California's recorded modern history. In January and February of 2020, California experienced one of the driest periods on record for that time of year, followed by a mass die-off of trees across the state. While consistent rain in March and April alleviated drought conditions, the risk of wildfires remained high in both Northern and Southern California, and the state braced for the Summer.

In mid-August 2020, a series of massive and severe summer thunderstorms over Northern California caused a siege of dry lightning, which sparked the first fire of the record-breaking and devastating season. By the end of the year, more than 9,000 fires had claimed 33 lives, burned through an estimated 4,304,370 acres, destroyed or damaged over 11,000 structures, and resulted in over \$12 billion in damages.

The President issued the first of two major disaster declarations (DR-4558) in August of 2020, which designated 15 counties as eligible for immediate aid. In October, after another wave of fires, which included the largest wildfire in the state's history, the President issued a second declaration (DR-4569), covering 10 counties.

This Disaster Recovery Multifamily Housing Program Policies and Procedures Manual establishes policies and procedures for the use of federal Community Development Block Grant – Disaster Recovery (CDBG-DR) funds for Multifamily Housing (DR-MHP Projects) in response to FEMA DR-4558 and DR-4569, as provided by the publication of the Federal Register, Vol. 87, No. 23, February 3, 2022 ([87 FR 6364](#)) and Federal Register Vol. 87, No. 100, May 24, 2022 ([87 FR 31636](#)) and Public Law [117-43](#).

In June 2024, the Department issued a CDBG DR Notice of Funding Availability for the DR MHP Funds to which these policies and procedures apply.

### 1.2 Uniform Multifamily Regulations (UMR)

The [Uniform Multifamily Regulations](#) (UMR) (Cal. Code Regs., tit. 25, Section 8300 et seq), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference. In the event of any conflict between any provision of the UMRs and any provision of these Policies and Procedures, the provisions of these Policies and Procedures shall prevail.

### 1.3 Defined Terms

**Action Plan:** means the Department’s CDBG-DR HUD Action Plan in the state’s initial HUD-approved Action Plan for 2020 disasters (“20 DR-Action Plan”).

**Affordable Rents:** means the annual [Multifamily Tax Subsidy Projects \(MTSP\) Regular Income and Rent Limits](#) published by HCD annually for each County, to determine rent limits. For Tribal Entities with Projects on Native American Lands, 25 USC 4103 section (9) shall apply to determine affordable rents.

**Affordable Units:** means a residential Unit that is used as a primary residence by its occupants that earns less than 80 percent of Area Median Income of their monthly income adjusted for household size as published by HCD annually in the [MTSP Regular Income and Rent Limits](#). For Tribal Entities with a Project located on Native American Lands, Section 25 USC 4103 (9) will be used instead.

**Affordability Period:** means the period of time that Affordability Restrictions must be kept in place based on the amount of grant funds received which shall be set forth in the Standard Agreement, Regulatory Agreement or Declaration of Restrictive Covenant.

**Alternative Accessibility Standard (also referred to as HUD Deeming Notice HUD 2014- 0042-0001):** means the alternative accessibility standard for accessibility set out in HUD’s notice at 79 Fed. Reg. 29671 (May 23, 2014), when used in conjunction with the requirements of 24 CFR pt. 8, 24 CFR Section 8.22, and the requirements of 28 CFR pt. 35, including 28 CFR Section 35.151 and the 2010 Standards for Accessible Design as defined in 28 CFR Section 35.104.

**Annual Income:** means annual income as defined at [24 CFR Part 5.609](#). For projects with low income housing tax credits, annual income may instead be determined using the process mandated by the California Tax Credit Allocation Committee.

**Applicant:** means the legal entity or entities applying to the Department for the Program funds, including Tribal Entity. Upon receiving an Award of DR-MHP funds, the Applicant or co-Applicants will, both individually and collectively, be referred to as “Sponsor” in the Department’s legal documents relative to an Award.

**Application:** means a formal document used to assess eligibility and viability of an individual Project and includes identification and documentation of all funding sources, Authorizing Resolutions, and documentation showing Applicant’s capacity for and compliance with state and federal regulations.

**Area Median Income (AMI):** means the [median family income](#) for specific geographic areas, adjusted for household size, as calculated by HCD Multifamily Tax Subsidy Projects (MTSP). Pursuant to 25 U.S.C. 4103, for Tribal applicants, AMI means, with respect to an area that is an Indian area, the greater of—(A) the median income for the Indian area, which the Secretary shall determine; or (B) the median income for the United States.

**Authorizing Resolution:** means a formal resolution of the Applicant’s/Sponsor’s highest governing authority, including but not limited to Boards, Commissions,

General or Tribal council or other tribal leadership for Tribal Entities, authorizing the Applicant to accept the CDBG-DR funding and the responsibilities that attach, thereto, in general and authorizing persons performing specific roles to act on its behalf, including, but not limited to being a signatory of the HCD Standard Agreement and other supporting documents.

**Award:** means the commitment of DR-MHP funds to an Applicant after the Notice of Funding Availability (NOFA) process is completed.

**Award Letter:** means a commitment letter (preliminary award letter) signed by the Director of the Department and Sponsor indicating that the Department has reserved DR-MHP Funds for a Project.

**Borrower/Ultimate Borrower:** means the borrowing entity and owner of the Development. The Sponsor determined by HCD as having sufficient capacity and experience to develop, own and operate the Development, or its wholly-controlled affiliate, shall have continuing control of the Development.

**Bureau of Indian Affairs (BIA):** means the United States Department of the Interior's federal agency that manages over 55,700,000 acres of trust, restricted or allotted lands held in trust or otherwise administered by the U.S. federal government for over 574 federally recognized Indian tribes through its Office of Trust Services and includes issuing approvals of leases and recording of leases, mortgages, encumbrances, liens, rights-of way, or other security documents against the tribal trust, restricted, allotted and Rancheria land through its Land and Title Records Office.

**CALGreen:** means California's first [green building code](#) and first in the nation state-mandated green building code. It is formally known as the California Green Building Standards Code, Title 24, Part 11, of the California Code of Regulations.

**California Environmental Quality Act (CEQA):** means the state statute that requires state and local agencies to identify significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible, pursuant to Public Resources Code section 21000 et seq. For Tribal Applicants where the Project is located on Native American Land, CEQA requirements are not applicable on Native American Land and will be conducted by the Department.

**CDBG-DR funds:** means funds allocated to the State of California by HUD pursuant to a Public Law and Federal Register Notice(s) for disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization in the most impacted and distressed areas resulting from a major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act at 42 USC 5121 et seq.

**Co-Applicant:** means the non-profit, for-profit corporation, limited liability company and/or limited partnership that applied for an award of DR-MHP funds with the Eligible Applicant (Developer or Tribal Entity.)

**Code of Federal Regulations (CFR):** means the body of the general and permanent rules that the federal government's executive departments and agencies

publish in the Federal Register.

**Construction Loan Closing:** means the closing of all loans funding acquisition, rehabilitation and the construction of the project.

**Contractor:** means a contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the Contractor, pursuant to 2 CFR section 200.331. See the definition of contract in § 200.1 of Part 200. Characteristics indicative of a procurement relationship between the non-Federal entity and a Contractor are when the Contractor meets at least one of the following:

- Provides the goods and services within normal business operations.
- Provides similar goods or services to many different purchasers.
- Normally operates in a competitive environment.
- Provides goods or services that are ancillary to the operation of the federal program.
- Is not subject to compliance requirements of the federal program as a result of the agreement, though similar requirements may apply for other reasons.

**Cross-Cutting Federal Requirements:** means the federal regulations that apply to any project or program receiving federal funds, including HUD funding. These federal requirements pertain to financial management, procurement, environmental, labor, acquisition, relocation, fair housing, and non-discrimination.

**Davis-Bacon Wage Requirements:** means the Davis Bacon and Related Acts (DBRA) which requires that all contractors and subcontractors performing work on federally assisted contracts in excess of \$2,000 for construction, alteration, or repair (including painting and decorating) to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar Projects in the area. For housing projects receiving DR-MHP Funds, the DBRA wage requirements apply to projects that include eight (8) or more dwelling units. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts. Contractors and subcontractors on DBRA prime contracts in excess of \$150,000, or related DBRA contracts in excess of \$100,000, are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay laborers and mechanics one and one-half times their basic rates of pay for all hours over 40 worked on a covered contract in a workweek.

For Tribal Entity Applicants where the project is located on Native American Land, DBRA requirements will not apply if the tribe has duly adopted through its Tribal Law a Tribally Determined Wage (TDW) and has provided HCD with both: 1) a copy of the tribal resolution or ordinance adopting the TDW and 2) a document of the methodology of how the Tribal Entity determined the TDW, pursuant to 25 U.S.C. § 1000.16 (e).

**Declaration of Restrictive Covenant:** means a legal document that the Department may use for Projects located on Native American Lands that is approved by the BIA and filed with the BIA's Land Title and Record's Office in accordance with 25 C.F.R. §150 et seq., which restricts the use of a Project's land for the development of affordable multifamily housing units in a manner consistent with the DR-MHP Program. A Declaration of Restrictive Covenant runs with the land so that the Department may enforce the requirements of these Policies and Procedures, and is binding on the parties and their successors and assigns throughout the Project's 50 year-period of affordability.

**Deeply Affordable Units:** means a housing unit that is rented up to thirty percent (30%) income level of the Area Median Income.

**Department:** means the State of California Department of Housing and Community Development, which shall serve as Grantee as defined below.

**Department of Housing and Urban Development (HUD):** means the Federal department through which the CDBG-DR funds are distributed to HCD.

**Developer:** means a private for-profit or nonprofit organization or Tribal Entity that owns or has site control over real property and arranges for design, financing, professional, technical, and construction services in connection with a housing project to develop affordable housing. A nonprofit organization formed as a special purpose entity in compliance with the Uniform Multifamily Regulations (UMR) Section 8313.2, by a Non-federally Recognized Tribe (NFRT) as defined herein, may be considered a Developer, if the NFRT meets all other Developer eligibility requirements. See also: Sponsor.

**Director:** means the director of the Department.

**Disability or Persons with Disabilities:** means a person meeting the definition set forth in 24 C.F.R. § 5.403. In addition to this definition, Disability means meeting the definitions of disability in the Americans with Disabilities Act ("ADA") ([42 USC §12102](#)) or the California Fair Employment and Housing Act (Part 2.8 (commencing with §12900) of Division 3 of Title 2 of the Government Code), where applicable.

**Disaster Recovery Multifamily Housing Program (DR-MHP):** means the CDBG Disaster Recovery Multifamily Housing Program administered by the Department. In these DR-MHP Policies and Procedures, the term shall refer to the DR-MHP for 2020 disasters (DR-4558 and DR-4569) or funding allocated to DR-MHP from any other Disaster Recovery source on or after July 1, 2022.

**DR-MHP Funds:** means the CDBG-DR funds allocated for the DR-MHP Program in a Disaster Recovery Action Plan and amendments prepared by the Department and approved by HUD.

**DR-MHP Loan:** The DR-MHP Loan is the loan provided by the Department to the Ultimate Borrower to fund the construction of the Project set out in the DR-MHP Application submitted by the Applicant.

**DR-MHP Assisted Unit or Restricted Unit:** means an Affordable Unit that is

subject to rent and occupancy restrictions as a result of the financial assistance provided by DR-MHP, that is rented at an Affordable Rent to a household that earns less than 65% of AMI adjusted for household size as published by HCD annually in the [Multifamily Tax Subsidy Projects \(MTSP\) Regular Income and Rent Limits](#), or for Tribal applicants, AMI in an Indian area, the greater of—(A) the median income for the Indian area, which the Secretary shall determine; or (B) the median income for the United States, as specified in the Regulatory Agreement or a Declaration of Restrictive Covenant, whichever is applicable. The DR-MHP Assisted Unit or Restricted Unit shall be restricted at the AMI level specified in the submitted and scored Application.

**Duplication of Benefits (DOB):** means any person, business concern, or other entity receiving financial assistance from multiple sources for a cumulative amount that exceeds the total need for the same recovery purpose as the CDBG-DR funds per Section 312 of the Stafford Act.

**Eligible Applicant:** means any for profit, or nonprofit or Tribal Entity that applies for funds pursuant to the Applicant eligibility section. (See also Applicant and Co-Applicant).

**Environmental Review Record (ERR):** means a permanent set of files containing all documentation pertaining to the environmental review compliance procedures conducted and environmental clearance documents as required by CEQA and National Environmental Policy Act (NEPA) regulations. (See CEQA and NEPA).

**Extremely Low Income (ELI):** means individuals or families whose income is at or below 30% of the area median income (AMI) or the federal poverty level, whichever is higher for the area of the proposed Project.

**Fair Market Value (FMR):** means the hypothetical price that a willing buyer and seller agree upon when they are acting freely, carefully, and with complete knowledge of the situation.

**Federal Emergency Management Agency (FEMA):** means the agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

**Federally Recognized Tribe:** means a tribe that meets the definition of “Indian Tribe” under 42 U.S.C. 5302.

**Federal Register:** means the daily journal of the federal government containing federal regulations, proposed rules, executive orders, proclamations, and other Presidential documents.

**Federally-Assisted Construction Contract:** means, in the context of CDBG-DR funds used for multifamily housing developments that include eight (8) or more dwelling units, the use of CDBG-DR funds to pay for construction contract costs, construction loan principal or interest, charges or fees to reduce the interest rate on a construction loan, or any other financing mechanism that pays for construction contracts, including provision of funds for permanent financing following

construction. Pursuant to HUD's [Factors of Labor Standards Applicability](#), CDBG-DR funds used for real property acquisition, architectural and engineering fees, legal services, accounting services, construction management services, and other similar soft costs that are not a construction contract do not trigger Davis-Bacon.

**Fiscal Integrity:** means that the total operating income plus funds released pursuant to the Regulatory Agreement or Declaration of Restrictive Covenant, from the operating reserve account is sufficient to do the following:

1. pay all current operating expenses;
2. pay all current debt service (excluding deferred interest);
3. fully fund all required reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement or Declaration of Restrictive Covenant; and
4. pay other extraordinary costs permitted by the Regulatory Agreement or Declaration of Restrictive Covenant.
5. The ability to pay any or all of the permitted annual Distributions pursuant to UMR Section 8314 shall not be considered in determining Fiscal Integrity.

**Grantee:** means "HCD" or the "Department."

**Ground Lease for Tribal Applicants:** Ground lease for Native American Lands that is entered into by a Tribal Entity for that certain real property identified in the executed lease that is to be approved (or will be approved) by BIA and recorded in the BIA's Land Title and Records Office of the United States Department of the Interior, and, in the official records of the County wherein the Native American Land is located. Grantee shall provide evidence of BIA approval of the Ground Lease promptly upon receipt of approval by the BIA.

**Housing:** means any structure which is currently available for residential use, or proposed residential use, in whole or in part.

**Household:** means one or more persons occupying a housing unit.

**HSC:** means the acronym for the California Health and Safety Code.

**HUD-Identified MID Area:** means those cities, counties or other jurisdictions or geography identified by HUD as most impacted and distressed areas based on analysis of FEMA and state data as a result of major disasters.

**Indian Housing Block Grant (IHBG):** means specific federal fund annual allocation generated through a formula grant that is distributed to Federally Recognized Tribes to provide for a range of affordable housing activities on Indian reservations and Indian areas through the Housing Urban Development Department (HUD). The block grant approach to housing for Native Americans was enabled by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA) at 25 U.S.C. § 4101 et seq.

**Initial Operating Year:** means the initial period of operation of the Rental Housing Development, beginning at the time of the initial occupancy of the completed Project and ending on the last day of the first fiscal year for the development.

**Land Title and Record's Office (LTRO):** means the Division of Land Titles and Records (DLTR) oversees nine regional and nine Tribal Land Titles and Records Offices (LTROs) which serve as the offices of record for all trust land and restricted land titles for Tribes and individuals. The Indian Land Record of Title is the official record of title documents and instruments affecting Native American Land that requires approval by the Secretary or other Federal officials. DLTR and its 18 LTROs are the official federal offices-of-record for all documents affecting title to Indian lands, and for the determination, maintenance, and certified reporting of land title ownership and encumbrance on Indian trust and restricted lands.

**Lease Rider:** means an amendment to a lease or Ground Lease that encumbers the real property or the Native American Lands where applicable, and such Lease Rider must have superior rights to any other instrument(s) that may encumber the Project's leasehold interest, and, grants the Department rights under the lease including but not limited to the right to cure lease defaults and, authorizes the Department to either take over the lease terms as the new lessee or arrange for a transferee to assume the lease terms and take over the leasehold estate. The Lease Rider is recorded against the fee estate (fee legal description) and requires a signature of the lessor, lessee/borrower, and the Department For projects located on Native American Lands, in addition to the requirements listed above, such Lease Rider must be approved (or will be approved) by BIA prior to disbursement of funds and must be recorded and filed with the BIA's Division of LTRO and in the county where the Native American Lands are located.

**Leverage:** means all documented monetary and non-monetary contributions, other than DR-MHP funds, which have been assigned a measurable value and which are applied to the specific DR-MHP Project. Leverage does not include contributions toward the cost of non-low income units and commercial space.

**Limited English Proficiency (LEP):** is a designation for persons that are unable to communicate effectively in English because their primary language is not English, and they have not developed fluency in the English language. A person with Limited English Proficiency may have difficulty speaking or reading English. A LEP person benefits from an interpreter who translates to and from the person's primary language. A LEP person may also need documents written in English translated into his or her primary language so that person can understand important documents related to health and human services.

**Low- to Moderate-Income (LMI):** means low to moderate income people having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for the HUD-assisted housing programs. This income standard changes from year to year and varies by household size, county and the metropolitan statistical area. Pursuant to 25 U.S.C. 4103, the term "median income" means, with respect to an area that is an Indian area on Native American Lands, the greater of—(A) the median income for the Indian area, which

the Secretary shall determine; or (B) the median income for the United States.

**Minority- and/or Women-Owned Business Enterprise (M/WBE):** means a business that is owned and controlled (minimum of 51% ownership) by a member of a minority group, or women.

**Monthly Activity Reports:** means reports submitted by the Sponsor that describe Project progress and/or beneficiaries served during a given reporting period.

**Monthly Financial Reports:** the forms and processes required for a Sponsor to request DR-MHP funds.

**Most Impacted and Distressed (MID):** is an area that meets the definition of Most Impacted and Distressed set by HUD in the Federal Register Notices incorporated herein. For purposes of the unmet needs' allocation, HUD has defined Most Impacted and Distressed as an area (county) that meets the following criteria:

1. Individual Assistance/Individual and Households Program (IHP) designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive IHP funding.
2. Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties with high levels of damage, collectively referred to as "most impacted areas".

For 2020 DR-MHP funds, HUD defined Most Impacted and Distressed areas as all of Butte, Fresno, Los Angeles, Napa, Santa Cruz, Shasta, Siskiyou, Solano, and Sonoma counties. For the unused portions of the 2018 allocation of DR-MHP funds, the Most Impacted and Distressed areas include the cities of Agoura Hills, Calabasas, and Malibu. Nonentitlement areas where Tribes have Native American lands in a MID County are considered as part of the MID.

**Multifamily Project:** A multifamily project or multifamily development is the same as Rental Housing Development defined below.

**Native American Housing and Self Determination Act (NAHASDA):** means the requirements set forth at 25 U.S.C. section 4101 et seq., that provides for federal assistance to federally recognized tribes and tribally designated housing entities (TDHE) as defined therein, and provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to Indian tribes or TDHE.

**Native American Lands:** means real property located within the State of California that meets the following criteria:

- (a) real property located within the geographic boundary of the State of California that is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more Indian tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and the land may be leased for housing development and residential purposes under federal law.

(b) All land located in "Indian Country" as defined by 18 U.S. Code (U.S.C.) 1151;

(c) All land within the limits of a Rancheria under the jurisdiction of the United States Government.

**National Environmental Policy Act (NEPA):** means the federal law establishing a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government consider the environment prior to undertaking any major federal action that could significantly affect the environment. The governing statutes are contained in 42 U.S.C. sections 4321-4347 and the implementing regulations at 24 C.F.R. Parts 50 and 58. For projects located on Native American Lands that have combined, mixed or leveraged NAHASDA grant, Tribal Entity is subject to 24 C.F.R. Part 58 in accordance with 24 CFR 1000.20.

**National Flood Insurance Program (NFIP):** means the program created by Congress in 1968 to reduce future flood damage through floodplain management and to provide people with flood insurance through individual agents and insurance companies. FEMA manages the NFIP.

**Native American Fee Lands:** means land located in the State of California that is either: (1) owned in fee by an Indian Tribe as defined at 42 U.S.C. 5302, Tribal entity or Tribal member located within the boundaries of a reservation or rancheria and subject to the Tribe's jurisdiction; or (2) owned or co-owned by an Indian Tribe as defined at 42 U.S.C. 5302 and located outside of the Indian Tribe's government jurisdiction. **NOFA:** is the acronym used for Notice of Funding Availability. The NOFA announces that DR-MHP funds are available and describes the terms and conditions of awards and requirements for applications that may be submitted.

**NFRT:** means a Non-Federally Recognized Tribe which is defined herein as an "Indian Tribe" that is not a federally recognized tribe, located in California and is either: (1) listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner's List, pursuant to 25 C.F.R. part 83.1, or (2) listed on the contact list maintained by the Native American Heritage Commission' for the purposes of consultation pursuant to Government Code section 65352.3, and, has formed and controls a special purpose entity in compliance with 25 CCR section 8313.2. Where an Indian Tribe meets the definition of a NFRT as defined the Indian Tribe may apply as a "Developer" or "Sponsor".

**Nonprofit:** means the same as "Nonprofit Corporation" defined in H.S.C. §50091 which also includes a Tribally Designated Housing Entity (TDHE) as defined in Section 4103 of Title 25 of the United States Code and HSC section 50104.6.5 and authorized by 25 USC 5304 (l).

**Performance Milestones:** means the development schedule and/or milestones proposed by the Sponsor at time of application and as set forth in the Standard Agreement.

**Program:** means the Disaster Recovery Multifamily Housing Program (DR-MHP).

**Program Income (PI):** means gross income that is directly generated from Sponsor's repayment of the DR-MHP Loan to the Department. Program Income is

subject to the CDBG-DR rules until Grant Closeout as described in [Section 5.15](#) of this document, at which time, the CDBG rules shall apply to PI in perpetuity.

**Program Portal:** is a web-based portal to the DR-MHP overview, program-specific documents, and Project Application.

**Project:** means a Rental Housing Development, which may include mixed-used development components. This also includes Scattered Site Projects as defined below.

**Project Completion Report:** means the report that conveys the project completion information for inputting into DRGR.

**Project Report:** means the HCD staff report presented to and approved by the Department's Internal Loan Committee. The Project Report sets forth the project criteria approved by the Department at the time of the Award of Program Loan funds. The project criteria may be amended only upon HCD's written approval in its sole discretion.

**Regulatory Agreement:** means a legal document that the Department shall use to set forth the DR MHP terms and affordability restrictions on rent and occupancy for a specific awarded Project for the development of affordable multifamily housing units in a manner consistent with the DR-MHP Program. The Regulatory Agreement shall be recorded against each Project's real property in the official records of the county or counties in which the Project is located and shall have priority over all other liens, encumbrances and other matters of record for the duration of the 55-year affordability period except as may be approved by the Department. Regulatory Agreements shall not be used for DR-MHP Projects located on Native American Lands. DR-MHP Projects located on Native American Lands shall use a Declaration of Restrictive Covenant and the affordability term may be reduced to 50 years, as applicable.

**Rental Housing Development:** means a structure or set of structures which collectively contains five (5) or more Units, as provided in the UMR, Section 8301. "Rental Housing Development" does not include any "health facility" as defined by [Section 1250 of the Health and Safety Code](#) or any "alcoholism or drug abuse recovery or treatment facility" as defined by [Section 11834.02 of the Health and Safety Code](#).

**Rental New Construction Project** means the development of a specific multifamily project on a specific site using CDBG DR funds.

**Responsible Entity (RE):** means the agency receiving CDBG assistance as described in the ERR requirements at [24 CFR Part 58](#). The RE must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the federal laws and authorities, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete. For the purposes of the DR-MHP Program, HCD is the RE.

**Scattered Site Project:** means a Project with five (5) or more units on one or more

contiguous or non-contiguous sites that meet the additional requirements in UMR Section 8303(b)(1)-(5).

**Senior Housing:** means housing where all units are restricted to residents who are 62 years of age or older under applicable provisions of Section 51.3 of the [California Civil Code](#) and the federal Fair Housing Act (except for Projects utilizing federal funds whose programs have differing definitions for senior projects, or have the Rehabilitation of occupied developments restricted to residents 55 or older, or have Supportive Housing or Special Needs Projects also restricting occupancy to residents who are 55 years of age or older), and further be subject to state and federal fair housing laws with respect to senior housing.

**Small Business Administration (SBA):** means the SBA's Office of Disaster Assistance (ODA), which provides affordable, timely and accessible financial assistance to homeowners, renters, and businesses, as well as other eligible applicants. The SBA low-interest, long-term loans are the primary form of federal assistance for the repair and rebuilding of non-farm, private sector disaster losses.

**Special Needs or Special Needs Populations:** Special Needs or Special Needs Population(s) means one or more of the following groups who need Supportive Services to maintain and stabilize their housing: (1) people with disabilities; (2) At Risk of Homelessness, as defined in [24 CFR Part 578.3](#); (3) individuals with substance use disorders; (4) frequent users of public health or mental health services, as identified by a public health or mental health agency; (5) individuals who are fleeing domestic violence, sexual assault, and human trafficking; (6) individuals who are experiencing Homelessness and individuals experiencing Chronic Homelessness as defined under the federal Continuum of Care Program at 24 CFR Part 578.3; (7) homeless youth as defined in Government Code Section 12957, subdivision (e)(2); (8) families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; (9) individuals exiting from institutional settings or at risk of placement in an institutional setting; (10) Older Adults in Need of Supportive Services; or (11) other specific groups with unique housing needs as determined by the Department. Special Needs Populations does not include "seniors or veterans" unless they otherwise qualify as a "Special Needs Population" as required by other statutory laws.

**Sponsor:** means the legal entity or combination of legal entities with continuing control of the Rental Housing Development. For the DR-MHP Program, the Sponsor is the recipient and borrower of DR-MHP Funds. Where the borrowing entity is or will be organized as a limited partnership, Sponsor includes the general partner or general partners who have effective control over the operation of the partnership, or, if the general partner is controlled by another entity, the controlling entity. Sponsor does not include the seller of the property to be developed as the Project, unless the seller will retain control of the Project for the period of time necessary to ensure Project feasibility as determined by the Department. Sponsor also includes a Tribal Entity as defined herein or other legal entity that meets the Program eligibility

requirements.

**Standard Agreement (SA):** means the written contractual agreement between the Department and the Sponsor to formally commit the DR-MHP funds to a Project, which sets forth the terms and conditions by which CDBG-DR-MHP funds are utilized in accordance with the DR-MHP PNP and applicable laws.

**Supportive Housing:** means housing with no limit on length of stay, that is occupied by the target population and is linked to onsite or offsite services that assist the Supportive Housing resident that needs support in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community.

**Supportive Services:** means social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.

**TCAC:** means the acronym for the California Tax Credit Allocation Committee.

**Tribally Determined Wage (TDW):** means a Tribally determined prevailing wage rate duly adopted by a FRT in accordance with tribal law and as authorized by NAHASDA at section 104(b)(3). A TDW applies to contracts or agreements for the development and operation of affordable housing where recipient's IHBG funds are mixed, combined or leveraged with the DR MHP funds for the DR MHP Project to be located on Native American Lands. The TDW is applied in lieu of the DBRA Federally determined prevailing wage rates and is not subject to the civil regulatory California Prevailing Wage Law.. Where a TDW is not available, any other federally funded programs will be guided by the labor standards specified by the DR-MHP program and the California Prevailing Wage law as applicable.

**Tribal Entity:** Tribal Entities(s) are defined as one of the following;

- a. An Indian tribe that meets the definition of Indian tribe pursuant to Section 25 U.S.C. section 5304 subd. (e); or
- b. A Tribally Designated Housing Entity as defined at 25 U.S.C. section 4103, that meets the definition of "Tribal Organization" pursuant to Section 25 U.S.C. section 5304 subd. (l); or
- c. An Indian tribe located in California that is either of the following:
  - (i) Listed in the Bureau of Indian Affairs Office of Federal Acknowledgment Petitioner List, pursuant to CFR Section 83.1 of Title 25; or
  - (ii) Listed on the contact list maintained by the California Native American Heritage Commission for the purposes of consultation pursuant to [Government Code Section 65352.3](#), and has formed and controls a special purpose entity in compliance with UMR Section 8313.2.

**Uniform Relocation Assistance and Real Property Acquisition Act (URA):** means the federal law that establishes minimum standards for federally-funded

programs and Projects that require the acquisition of real property (real estate) that result in the displacement of persons from their homes, businesses, or farms and entitles these displaced persons to relocation benefits and assistance. For DR MHP Projects on Native American Lands where IHBG funds are combined, mixed or leveraged, Applicant is only subject to NAHASDA requirements at 24 C.F.R. Section 1000.14.

**UMR:** means Uniform Multifamily Regulations, which are located at 25. C.C.R., Section 8300 et seq. and that have been incorporated by reference herein.

**Unit:** means a residential Unit that is used as a primary residence by its occupants, including efficiency Units as defined in the California Building Code.

## Section 2. Administration of Funds

### 2.1 Eligible Applicant

Eligible Applicants for DR-MHP Projects include nonprofit and for-profit Developers and Tribal Entities. Eligible Applicants may submit Project applications for Projects located within one of the following Counties: Butte, Fresno, Los Angeles, Napa, Santa Cruz, Shasta, Siskiyou, Solano, and Sonoma in accordance with the Project eligibility requirements outlined in [Section 2.2](#) below.

Applicants must be eligible to receive federal funds and not be listed on the government-wide exclusions in the [System for Award Management \(SAM\)](#).

#### Procedures:

To determine Applicant eligibility, review the submitted application and attachments to:

1. Confirm the Applicant is a nonprofit or for-profit Developer or that the applicant is a Tribal Entity; and
2. Confirm the Applicant is not listed on the government-wide exclusions in the SAM.

### 2.2 Eligible Project

New housing construction is eligible pursuant to [83 FR 5851](#), paragraph B.32 of Section VI. Given California's housing crisis where the affordable housing inventory is critically low, and the wildfire disasters destroyed thousands of units of housing stock, many of which were rental properties, exacerbating and increasing the severity of the lack of housing, the development of affordable rental units through multifamily new construction is critical for recovery and is therefore eligible.

The proposed project must be located in a MID area geographic set-aside as defined in [Section 2.6](#).

#### Procedures:

To determine basic project eligibility:

1. Review the submitted application and attachments to confirm the project includes the new construction of multifamily rental housing.
2. Review the location of the project to determine if it is located within a MID area geographic set-aside as defined in [Section 2.6](#).

### 2.3 Threshold Requirements

Projects shall be eligible for an Award of funds provided the application addresses each of the following threshold requirements.

#### 2.3.1 Project Characteristics

1. At the time of application, Sponsor shall demonstrate site control in

accordance with UMR §8303. For Projects developed on Native American Lands and where site control is a ground lease, the lease agreement between the Tribal Entity and the Project owner may be for a time period less than required by UMR §8303, but must be for a period not less than 50 years. If a Sponsor's site control documentation (e.g., option) will or may expire prior to the anticipated date of the Program Award as specified in the NOFA, the Applicant will satisfy the threshold site control requirement so long as evidence of a legally valid extension is submitted during the application review period. For purposes of this paragraph, "evidence of a legally valid extension" means an option (and/or other applicable site control documentation) that is fully executed prior to the expiration of the site control documentation, and that extends the term of the site control documentation through the actual date of the Program award.

2. At the time of application for DR-MHP funds, the proposed Project must not have closed on construction financing or started construction.
3. The application includes a letter providing prior notification to the local legislative body, pursuant to [HSC Section 50675.7\(e\), or](#) tribal governing body.
4. The application includes a letter or resolution of support for the proposed Project from the local legislative body, or tribal governing body where the proposed Project is located.
5. The proposed Project must tie back to the disasters by increasing the supply of affordable housing units.
6. The proposed Project must have a minimum of five (5) total units, including Scattered Site Projects.
7. The proposed Project must have a minimum of five (5) Affordable Units or 51 percent of units must be Affordable Units, whichever is greater. CDBG-DR funds are limited to low to moderate income housing units. Proposed Projects may have mixed-income units, but CDBG-DR funds must only be applied to the Affordable Units for occupation by Low- to Moderate- Income Households.
8. All sources of funding required to complete the Project must be identified, including the status of the funds (e.g., applied for funds – pending decision, applying for funds, or funds secured and fully committed to the project).
9. The proposed Project must be cost reasonable, which is what a reasonable person would pay in the same or similar circumstances for the same or similar item or service.
10. Project must conform to the Construction Standards set forth in [Section 3.1](#) of this document.
11. Project must comply with all applicable requirements set forth in [Section 3.4](#) of this document.

12. Per [Administrative Notice No. 23-01](#), if a Project has a federally-originated rental assistance or operating subsidies, or rental subsidies operated by the City and County of San Francisco, or the City of Los Angeles, the Project must make a one-time Transition Reserve Fee payment at permanent loan closing in the amount of fifteen percent (15%) of the first year's maximum subsidy amount.
13. The proposed Project must be documented in the application to address the following affordable rent requirements and tenant income limits over the duration of the 55-year affordability period. At a minimum, the following thresholds must be adhered to in all Project applications:
  - The number and type of proposed DR-MHP Assisted Units that will be leased to tenants with an income of up to 65 percent of the AMI based on regulatory and program requirements.
  - Proposed Projects shall include at least 10 percent of the proposed DR-MHP Assisted Units for households with incomes not exceeding 30 percent of AMI.
  - Affordable rents will be determined by using the [Multifamily Tax Subsidy Projects \(MTSP\) Regular Income Rent Limits](#) published annually by HCD for the jurisdiction where the Project is located.
  - Projects shall be restricted by a recorded Regulatory Agreement for a minimum affordability period of 55 years, except that a proposed Project to be developed on Native American Lands shall be restricted by a Declaration of Restrictive Covenant for a period not less than 50 years and where site control is through a ground lease, said lease shall be so restricted for a period not less than 50 years.
14. The application received a minimum point score of 88 points based on the Universal Scoring Criteria set forth in Section 4.4.

#### Procedures:

To determine compliance:

1. Review the submitted application workbook and attachments to determine if the application meets the criteria of Section 2.3.1 of this document.

#### 2.3.2 Maximum Loan Amounts

Awards of CDBG-DR funds shall not exceed the lesser of the demonstrated need of the Project or the calculation based on Figure 1 below (the "DR-MHP Maximum Per-Unit Loan Limit"). The DR-MHP per-unit maximum loan assistance is consistent with the [Basic Statutory Mortgage Limits, Section 234](#), adjusted for [high cost areas as published by the Federal Housing Administration \(FHA\)](#). As a statewide program with a variety of housing markets and corresponding costs, HCD uses the FHA limits as a federally-established

industry standard and safe harbor for cost reasonableness on a per-unit basis for housing serving low-income households. Consistent with other HUD affordable housing funding sources, these per-unit loan limits ensure an appropriate level of federal investment in Multifamily projects on a per-unit basis. This policy direction encourages leveraging with HOME, Low Income Housing Tax Credits, State MHP, and other available affordable housing resources.

**FIGURE 1: DISASTER RECOVERY MULTIFAMILY HOUSING PROGRAM  
MAXIMUM PER-UNIT LOAN LIMIT (2024)**

Bedrooms	Maximum Subsidy
0	\$204,174
1	\$234,055
2	\$284,618
3	\$368,204
4	\$404,171

For DR-MHP loan limit calculations, the Unit count may include the number of DR-MHP Assisted Units within the project, including units with long-term, low-income or occupancy restrictions imposed by HCD, Tax Credit Allocation Committee (TCAC), or other public agencies and restricted at no greater than 65 percent of AMI. Awards of CDBG-DR funds shall not exceed the lesser of the demonstrated need or the MHP Maximum Per-Unit Loan Limit calculation.

**Procedures:**

To determine the maximum DR-MHP loan to a Project:

1. Validate the demonstrated funding gap without DR-MHP funding.
2. Verify no Duplication of Benefits.
3. Perform a cost allocation of Units by bedroom count and value from Figure 1, above, to determine the minimum number of units to be DR-MHP assisted Units.

**2.3.3 Eligible Uses of Funds**

HCD’s costs to implement the program are eligible activity delivery costs, including staff time and consultant charges.

Eligible Project costs incurred by Sponsors include:

- Property acquisition costs;
- Architectural, appraisal, engineering, environmental, legal and other consulting costs, and fees, which are directly related to the planning and execution of the Project and which are incurred through third-party contracts;

- Escrow, title insurance, recording and other related costs;
- Building permits, and state and local fees;
- Local development impact fees;
- Developer fees, as set forth in the UMR;
- Mobilization, demolition, site prep, and clean up;
- Residential construction costs; and
- Onsite improvements related to the Project.

Ineligible Project costs for Sponsors include:

- Costs incurred between the date of application and environmental clearance (e.g., Authority to Use Grant Funds) that constitute an adverse environmental impact or that limit the choice of reasonable alternatives pursuant to [24 CFR 58.22\(a\)](#);
- Application development costs;
- Advances of any type, including construction;
- Interest and financing costs;
- Facility operating or maintenance expenses; and
- Reserves and contingencies;
- Furnishings;
- Offsite Improvements, except where the improvement is contiguously adjacent to the Project parcel and serves the housing.
- Construction or any other costs related to any non-residential component of the Project
- Reimbursement of Sponsor’s capital investment or prepaid expenses.

HCD reserves the right in its sole and absolute discretion to approve or deny the applicability and eligibility of costs on a per-application basis. HCD requires that construction costs are reasonable and consistent with current market costs for the area where the multifamily construction will take place.

#### Procedures:

To determine eligible and ineligible costs:

1. Review the submitted application workbook and/or the development sources and uses by source to determine if the planned use of DR-MHP funds is consistent with Section 2.3.3 of this document. Validate the financial gap without DR-MHP funding.

#### 2.3.4 Calculating Duplication of Benefits (DOB)

In accordance with the Robert T. Stafford Disaster Relief and Emergency

Assistance Act ([42 U.S.C. 5121-5207](#)) (Stafford Act) and Federal Register Notice published June 20, 2019 (84 FR 28836) requirements, all activities funded with CDBG-DR dollars must undergo a Duplication of Benefits review and calculation prior to Project award and prior to Project closeout. DOB occurs when a program beneficiary receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. This includes all benefits available to a person or entity for the same recovery purpose, including cash and other resources such as insurance proceeds, grants, FEMA assistance, SBA loans, other local, state, or Federal program funds, and private or nonprofit organization funds.

It is HCD's responsibility to ensure that the DR-MHP Program provides assistance only to the extent that the disaster recovery need has not been fully met by funds that have already been paid, or will be paid, from another source. The Project application must document all funds obtained from any source from the date of the disaster until the date of the application and any funds which the Applicant believes may be forthcoming after Application is submitted.

Additionally, HCD shall perform a check for DOB prior to issuing an award and pre-Project closeout to ensure that duplicative assistance is not provided for multifamily housing. HCD also reserves the right to perform additional DOB checks throughout the course of the Project's period/performance to ensure there is no duplicative assistance throughout the course of the Project.

To address any potential duplication of benefits, the Standard Agreement will include provisions requiring repayment of any assistance later received for the same purpose as the CDBG-DR funds. The Standard Agreement must also include the following language: **“Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.”**

Please reference HCD's [Grant Administration Manual](#), Section XI for additional guidance on DOB, including potential sources, calculation, and verification.

#### Procedures:

1. HCD will perform a DOB check prior to issuing an award.
2. HCD will verify no DOB prior to loan closing.
3. HCD will verify no federal funding supplantation prior to loan closing by comparing the application to the final (updated) proforma sources and uses.
4. If DOB is determined, HCD will either reduce final award amount.

#### 2.3.5 Appraisal and Market Study Requirements

- A. As part of the application submission, the Applicant/Sponsor must submit an appraisal and market study to:

1. Establish a value for the land to be purchased or leased as part of the Project for purposes of evaluating the reasonableness of the purchase price or lease terms.
  2. Assist with establishing other reasonable development costs pursuant to [Section 2.3.3 herein](#).
  3. Assess Fiscal Integrity.
  4. Verify an adequate tenant market.
- B. Any appraisal required by the Department shall be prepared at the Sponsor's expense by an individual or firm which:
1. Has the appropriate license and the knowledge and experience necessary to competently appraise low-income residential multifamily rental property;
  2. Is aware of, understands, and correctly employs those recognized industry methods and techniques that are necessary to produce a credible appraisal;
  3. In reporting the results of the appraisal, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true value and condition of the property; and
  4. Is an independent third party having no identity of interest with, or financial investment in, the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, the general contractor, or the Project.
- C. Any market study required by the Department shall conform to the market study guidelines adopted by TCAC and be prepared at the Applicant/Sponsor's expense by an individual or firm which:
1. Has the knowledge and experience necessary to conduct a competent market study for low-income residential rental property;
  2. Is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible market study;
  3. In reporting the results of the market study, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property; and
  4. Is an independent third party having no identity of interest with, or financial investment in, the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, the general contractor, or the Project.

**Procedures:**

1. HCD will review the appraisal and market study to determine compliance with Section 2.3.5 of this document.

### 2.3.6 Tenant Selection Plan Requirement

Applicant/Sponsor shall prepare and submit the tenant selection criteria and processes with their application. Such tenant selection criteria shall comply with all applicable state and federal fair housing laws, where applicable, as required in [UMR Section 8305](#). For Tribal Entities with Projects on Native American Lands, pursuant to NAHASDA, the Tribal Entity may legislate a Tribal Admissions and Occupancy Standards (TAOS) policy that governs tenant selection.

#### Procedures:

1. HCD will review the Tenant Selection Plan submitted with the application to determine compliance with [UMR Section 8305](#).

### 2.3.7 Site and Neighborhood Standards Requirement

Applicant/Sponsor shall prepare and submit a Site and Neighborhood Standards evaluation of the proposed site for new construction of multifamily housing to demonstrate the site meets the requirements in [24 CFR 983.57\(e\)\(2\)](#) and [\(3\)](#).

#### Procedures:

1. HCD will review the Site and Neighborhood Standards evaluation submitted with the application to determine compliance with submitted with the application to determine compliance with [24 CFR 983.57\(e\)\(2\)](#) and [\(3\)](#).

### 2.3.8 Supportive Services Plan Requirements

For Applications that include housing with Supportive Services, a Supportive Services Plan is required.

- A. Supportive Services plans must address the needs of the target Special Needs Population served. Where DR-MHP and Veterans Housing and Homelessness Prevention Program (VHHP) are assisting the same Units, and there is a conflict between the respective Supportive Services Plan requirements, the Supportive Services Plan requirements of VHHP shall prevail.
- B. With prior written approval by the Department certain intake, coordination and referral duties may be performed by a resident services coordinator or other services specialist, rather than by a case manager . Sponsors and LSPs are responsible for ensuring that the nature and manner of service delivery is appropriate for the target population.
- C. A preliminary Supportive Services Plan shall be submitted by the Sponsor at time of application. Prior to the permanent closing of the DR-MHP loan, the Sponsor shall finalize the plan and obtain the Department's express written approval thereof. The plan 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. The tenant selection criteria and processes must comply with all applicable state and federal fair housing laws as required in [UMR Section 8305](#). For projects serving Homeless, including Chronically Homeless populations, the plan must indicate how the Project will be connected to the local Coordinated Entry System (CES), where operational, and how the Project will conform to Housing First practices set forth in [Welfare and Institutions Code Section 8255](#). Where CES is not operational, or where Chronically Homeless or Homeless are not being referred, another tenant referral system shall be used for Special Needs Populations which prioritizes based on need and barriers to housing stability.
3. A description of the specific services to be provided. Any off-site services should be easily accessible, with the on-site services provider being responsible for helping tenants connect easily and effectively to transportation and services in the community;
4. 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), services to be provided must 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;
5. Identification of the organization(s) that will provide services as well as memoranda of understanding or commitment letters from the proposed service providers;
6. 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;
7. A description of the evidence-based case management practices that will be employed;
8. 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);
9. A description of plans and measures to ensure the safety and security of residents and staff (e.g., guest and visitor policies, policies on the violation of safety rules, staff training, and building design features intended to promote security);
10. A services line-item budget itemizing all expenses and listing the sources, amounts, and status (i.e., proposed or committed) of supportive services funds.
11. Funding source(s);
12. A staffing plan with staffing levels sufficient to meet the needs of the

target population. Where one or more of the DR-MHP Assisted Units are limited under Department Regulatory Agreements or Declaration of Restrictive Covenants, to occupancy by Chronically Homeless, services must be provided with a household to staffing ratio not exceeding 20 to 1. Where one or more of the DR-MHP Assisted Units are limited under Department Regulatory Agreements or Declaration of Restrictive Covenant to occupancy by Homeless persons with disabilities, services must be provided with a household to staffing ratio not exceeding 25 to 1. Where one or more of the DR-MHP Assisted Units are limited under Department Regulatory Agreements or Declaration of Restrictive Covenant, to occupancy by other Special Needs populations, services must be provided with a household to staffing ratio not exceeding 40 to 1;

13. A description of communication protocols between service staff and property management staff, including how the staff will work together to prevent evictions; to adopt and ensure compliance with harm reduction principles; and to respond to and implement reasonable accommodations, reasonable modifications, and auxiliary aids and services to ensure effective communications for people with disabilities throughout the life of the Project in a manner than complies with Article 18 of the FEHA regulations regarding reasonable accommodations and modifications ([2 CCR Section 12176-12185](#)) and the ADA regulations on effective communications (35 CFR Section 25.160 and [28 CFR Section 36.303](#)).
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. Sample forms may be requested by the Department; and
15. Other information deemed necessary by the Department to evaluate the proposed services, which may differ by tenant population.

#### Procedures:

1. HCD will review the Supportive Services Plan for compliance with Section 2.3.8 of this document.

#### 2.4 Type and Term of Loan

Program funds shall be used for construction phase financing only, and may not be held for use until permanent financing. Funding shall be provided in the form of a loan.

The initial term of the loan shall be 55 years, commencing on the date of recordation of the DR-MHP loan documents against the Project real property, except that the initial term of the loan may be 50 years if the Project is located on Native American Land and if a 55-year term is not feasible as determined by the Department or prohibited by federal or tribal law or ordinance. The 50-year term shall commence on the date of the written approval by the BIA. Upon written approval, the DR-MHP loan documents shall be filed and recorded with the LTRO and recorded with the county

where the Native American Land is located.

The DR-MHP loan shall be secured by the Project's real property and improvements, subject only to liens, encumbrances and other matters of record approved by the Department pursuant to [UMR Section 8315](#). The DR-MHP loan shall have priority over loans provided by the Affordable Housing Program administered by the Federal Home Loan Bank.

For projects located on Native American Land, the subject instrument shall be deemed sufficiently recorded if recorded with the BIA's LTRO following written BIA approval. The Department reserves the right to record the subject instruments in the county recording system having jurisdiction over the property. If a Department loan is recorded against a fee interest, then there must be a restriction preventing that land from being put into trust until the affordability term of the Department loan expires.

#### 2.4.1 Maximum Loan Amounts

HCD will use Using the MHP Maximum Per-Unit Loan Limits for appropriate loan sizing. Awards of CDBG-DR funds shall not exceed the lesser of the demonstrated need or the MHP Maximum Per-Unit Loan Limit. The per unit loan limits are defined in [Section 2.3.2 of this document](#). When sizing the loan, the Department will also consider all other available financing and assistance, including the full amount of any tax credit equity generated by the Project. In addition, the loan amount shall not exceed the total costs that are eligible uses of funds pursuant to [Section 2.3.3](#).

#### 2.4.2 Interest Rate and Loan Repayments

Loans shall have the following terms:

1. Loans shall bear simple interest on the unpaid principal balance at a rate that is the lesser of:
  - 3 percent per annum; or,
  - If a Project has received an allocation of tax credits, the maximum rate that allows the DR-MHP loan to be treated as debt for federal or state low-income housing tax credit purposes, or that avoids the inability to syndicate due to projected negative capital account balances, but not less than 0.42 percent, but only if the change in interest rate:
    - Materially increases the feasibility of the Project; and
    - Ensures long-term affordability for the residents.

The Department may require a third-party tax professional to verify the necessity for reducing the interest rate below three (3) percent, the cost of which shall be borne by the Sponsor.

2. Interest shall accrue from the date that funds are disbursed by the

Department to or on behalf of the Sponsor.

3. Monitoring Fee

For the first 30 years of the loan term, interest payments in the amount of 0.42 percent of the original principal loan balance shall be payable to the Department commencing on the last day of the Initial Operating Year and continuing on each anniversary date thereafter. The payment shall remain constant for the first 30 years regardless of any paydown of the original loan amount. The balance of accrued interest shall be payable out of Operating Income remaining after payment of approved Operating Expenses, debt service on other loans, and reserve deposits. Commencing on the 30th anniversary of the last day of the Initial Operating Year, and continuing annually thereafter, the monitoring fee shall be payable annually in an amount equal to the lesser of the following, regardless of whether the loan has been prepaid in full or in part:

- an amount equal to the full amount of interest accruing on the original principal loan amount; or
- the amount determined by the Department to be necessary to cover the costs of continued monitoring of the Project for compliance with the requirements of the Program which amount shall in no event be less than that in effect for the immediately preceding year. HUD Sections 811 and 202 projects will be subject to the requirements of this subsection.

4. Except for the required payment of 0.42 percent of the original principal loan balance, the Department shall permit the deferral of accrued interest for such periods and subject to such conditions as will enable the Sponsor to maintain Affordable Rents, maintain the Fiscal Integrity of the Project, and pay allowable Distributions pursuant to [UMR Section 8314](#).

5. All DR-MHP loan payments (including the 0.42 percent loan payment) shall be applied in the following order:

- Any expenses incurred by the Department to protect the property or the Department's security interest in the property, or incurred due to the Sponsor's failure to perform any of the Sponsor's covenants and agreements contained in the deed of trust or other loan documents;
- Payment of accrued interest; and
- Reduction of principal.

6. The total outstanding principal and interest, including deferred interest, shall be due and payable in full to the Department at the end of the loan term in accordance with the terms of the Department's loan documents.

## 2.5 Verifying Program Income

HCD manages Program Income (PI) through the provisions in the Standard Agreement, which all Sponsors must sign to receive funding from HCD. In the unlikely event that a Project generates PI during the project development phase, Sponsors must report the PI to HCD through their Monthly Financial Report and must expend PI prior to additional grant funds being drawn. PI may only be used for eligible Project costs related to the awarded Project. Per [87 FRN 6364](#), HCD must report all PI to HUD through the DRGR Quarterly Performance Report (QPR).

Any PI remaining at the end of a Standard Agreement shall be remitted to HCD during closeout where it is tracked and reported as revenue until it is obligated through a new Standard Agreement.

Repayments of loans pursuant to Section 2.4.2(3) of this document shall be used by HCD as an eligible cost for continued monitoring of the Project for compliance with the requirements of the Regulatory Agreement or Declaration of Restrictive Covenant. Annual monitoring shall be conducted by the HCD Asset Management and Compliance (AMC) section.

## 2.6 Allocation Methodology and Geographic Set-Asides

Funding was included in the Action Plan for MID counties based on a formula that determined the proportionate share of the total program allocation based on the disaster impacts to the listed jurisdiction(s). HCD used a methodology to calculate the allocations based on the FEMA Individual Assistance (FEMA IA) applicants. This allocation also ensures that 100 percent of multifamily housing recovery funds are spent to implement Projects in MID areas. Totals were adjusted using FEMA current addresses at the time of application to account for housing needs.

**FIGURE 2: GEOGRAPHIC SET-ASIDES (DR-4558 and DR-4569)**

2020 Disasters	Amount
Santa Cruz (County)	\$41,086,865
Butte (County)	\$31,419,367
Napa, Solano, and Sonoma (Counties)	\$30,210,930
Los Angeles and Fresno (Counties)	\$13,292,809
Siskiyou and Shasta (Counties)	\$4,833,749
<b>Total</b>	<b>\$120,843,721</b>

The geographic set-asides above represent the total set-aside for each region. Subsequent to NOFA publication, threshold eligibility reviews, and competitive scoring, allocations to projects will be made to the highest scoring projects within each regional set-aside based on the lower of their demonstrated funding gaps or the MHP Maximum Per-Unit Loan Limits. If a region is over-subscribed, the next

highest-ranked project will receive a partial award. If a region is under-subscribed, excess funds from that region will be allocated to the highest-rated project(s) among all projects in other regions that would otherwise receive a partial award. If funds remain after fully funding the remaining gap for the highest-rated project(s) among all projects in other regions that would have otherwise received a partial award, funds will be allocated to the next highest rated project(s) among all projects in other regions, and such award may partially or fully address a demonstrated funding gap.

Awarded projects that require 4 percent or 9 percent tax credits shall have no more than three (3) consecutive tax credit rounds or 18 months to secure tax credits or fill the funding gap before the MHP award expires.

Subsequent to the expiration of any awards made pursuant to the original NOFA, the remaining funds may, at HCD’s discretion, be pooled and all previously awarded projects with a remaining gap may be considered for funding in rank order based on their original NOFA score, without regard to the per-unit funding restrictions in Section 2.3.2 and NOFA Regional Set-Aside, to fill the funding gap. HCD may add CDBG-DR funds to DR-MHP via amendments to the [Action Plan](#).

**FIGURE 3: GEOGRAPHIC SET-ASIDE (DR-4407)**

2018 Disaster	Amount
Agoura Hills (City)	\$4,827,321
Calabasas (City)	\$3,257,461
Malibu (City)	\$18,602,848
<b>Total</b>	<b>\$26,699,371</b>

Pursuant to State CDBG-2018 Disaster Recovery Action Plan Non-Substantial Amendment Number 5, if subrecipients who have executed a Master Standard Agreement (MSA) with HCD fail to meet performance milestones or other contractual requirements, HCD may cancel the MSA. HCD may include any unused funds from cancelled MSA(s) in a NOFA for developers to directly apply for project funding. To the extent feasible, the NOFA will utilize the unused funds in Figure 3 above in their original geographical area. Implementation of projects using these funds will be subject to the Program Policies and Procedures set forth in this document.

### 2.7 Minimizing Land Acquisition/Relocation

If acquisition and/or relocation is required, Sponsor shall make every effort to minimize displacement of families from their home and/or neighborhood, according to the state’s [Residential Anti-Displacement and Relocation Assistance Plan \(“RARAP”\)](#). Additionally, compliance with Federal Acquisition and Relocation laws will be required. Please reference the state’s CDBG-DR [Grant Administration Manual](#), Section XIV for additional acquisition and relocation procedures and requirements.

Projects shall be designed with the established community in mind to lessen the

displacement of families and must commit to the 55-year affordability period. Sponsors shall follow the state's RARAP to minimize displacement.

Sponsors shall comply with all applicable federal, state, and local relocation law. Pursuant to relocation law, a Sponsor must have a relocation plan prior to proceeding with any phase of a project or other activity that will result in the displacement of persons, businesses, or farm operations. To ensure that displaced persons and entities do not suffer a disproportionate impact as a result of projects which benefit the public, all notices to vacate and relocation services must be provided to them on a timely basis in strict accordance with applicable law. In addition, before the CDBG-DR Project funds will be disbursed, the Approved Project must have either:

- An HCD-approved relocation plan; or
- An HCD-issued Certification Regarding Non-Application of Relocation Benefits and Indemnification Agreement, which has been duly executed and approved by HCD.

If the parcel is vacant, a self-certification regarding Non-Application of Relocation Benefits and Indemnification Agreement on a form prepared by HCD shall be sufficient to document compliance with this requirement.

Where the Sponsor's activities will or may result in displacement, the Sponsor's development budget shall include sufficient funds to pay all costs of relocation benefits and assistance. Any modifications to the foregoing process requirements must be approved in advance by HCD in writing.

Where Sponsor's Project is located on or within Native American Lands, Sponsor is exempt from compliance with this section and shall comply with federal relocation law requirements under NAHASDA at 24 C.F.R. § 1000.14.

## 2.8 Affirmative Marketing Plan

Sponsors advertise Projects and units to fill vacant units or to develop a waiting list of interested applicants for the subsidized housing. DR-MHP applications, where applicable, must include an Affirmative Marketing Plan developed using the Affirmative Fair Housing Marketing Plan Form HUD-935.2A. Affirmative Marketing involves special outreach and advertising efforts designed to communicate the availability of DR-MHP assisted housing to those groups or individuals who might otherwise be unlikely to apply. Those groups are identified through analysis of local housing market area demographics using statistics readily available from the U.S. Census Bureau and determining appropriate advertising and outreach efforts to be followed by Sponsors to reach out to those least likely to apply for the housing opportunity. Affirmative marketing efforts must begin at least 90 days prior to initial occupancy.

HCD has determined that in addition to the required demographic analysis, individuals and families that were impacted by the disasters, low-income immigrants, persons with limited English proficiency, and Section 8 Housing Choice Voucher holders are least likely to apply. Examples of renters impacted by the disasters include renters that have lost rental units or have been displaced due to the impacts

of DR-4558 and DR-4569.

Affirmative Marketing Plans submitted with applications shall demonstrate that the proposed Projects will affirmatively further fair housing and adequately address the tenant market in ways that are likely to lessen area racial, ethnic, and low-income concentrations, and/or promote affordable housing in low-poverty, nonminority areas in response to natural hazard-related impacts.

#### Procedures:

To prepare the Affirmative Marketing Plan:

1. Sponsors shall download [Form HUD-935.2A](#).
2. Review the form and its instructions.
3. Identify the Census Tract where the housing is located.
4. Determine the Census Tract(s) that comprise the Housing Market Area (generally multiple Census Tracts comprising a City or portion of a County). Develop a map to represent this market area. CPD Maps may be used for this purpose.
5. Determine the Census Tract(s) that comprise the Expanded Housing Market Area (generally multiple Census Tracts that comprise an entire County and often areas that extend beyond jurisdictional boundaries).
6. Using CPD Maps or U.S. Census Bureau data, complete Form HUD-935.A Worksheet 1, listing the number of residents in each category (existing Project residents if applicable, Project wait list applicant data if applicable, residents of the Census Tract, residents of the designated Housing Market Area, and finally residents of the Expanded Housing Market Area).
7. Based on the data evaluation in Worksheet 1, to identify any under-representation of certain demographic groups in terms of race, color, national origin, religion, sex, familial status, or Disability. If there is significant under-representation of any demographic group among Project residents or current applicants (for existing housing) in relation to the housing/expanded housing market area, then targeted outreach and marketing should be directed towards these individuals least likely to apply. To identify underrepresented groups least likely to apply for housing in newly constructed Projects that do not currently have existing occupants or waitlists, evaluate the Census Tract data against the Housing Market Area and the Expanded Housing Market Area to identify underrepresented groups in the Census Tract. Note that individuals and families that were impacted by the disasters and Section 8 Housing Choice Voucher holders shall be considered among those who are under-represented and least likely to apply.
8. Worksheet 2 shall not be used. Residency Preference Areas shall not be established for DR-MHP Projects.
9. Complete Worksheet 3 to identify each targeted underrepresented population and the specific community contacts to be consulted for the purpose of

effectuating Affirmative Marketing. To reach out to individuals and families that were impacted by the disasters and to Section 8 Housing Choice Voucher holders, the AFHMP shall, to the extent feasible, identify non-profit caseworkers who were on the ground during the disaster, contact area public housing agencies, advertise through TV/Radio/Newspapers/Billboards/211 system. Within the interest list and application, data shall be collected to determine if a prospective applicant was impacted by the disasters or is a Section 8 Housing Choice Voucher holder.

10. Complete Worksheet 4 to identify appropriate advertising methods (publications, outlets) for each targeted population.
11. Review and update the AFHMP every five (5) years, or when there are significant changes to the demographics of the Project or the local housing market area.

## 2.9 Meeting a National Objective

All CDBG-DR funded activities must satisfy a National Objective of the CDBG program at [24 CFR 570.208](#). For DR-MHP, all Projects must meet the low to moderate income housing (LMH) national objective, which requires that at least 51% of units are occupied by LMI households. Proposed Projects that do not have more than 51% of units occupied by LMI households may only be funded for the proportional amount of assisted units, however, pursuant to 24 CFR 570.483(b)(3), if the Project is a rehabilitation Project or a senior new construction Project, the Project must include at least 51% of units as LMI-occupied, or a waiver must be requested from HUD. All waiver requests must document legal and justifiable good cause. While proposed Projects may be mixed-income units, CDBG-DR funds are limited to the Affordable Units for occupancy by Low- to Moderate-Income Households.

## 2.10 Completing Environmental Review

An environmental review must be performed on the Project prior to federal funds being disbursed. Sponsors shall prepare the appropriate level of environmental review and submit the environmental review document, complete with appropriate citations and supporting analysis and studies, to HCD for review at Sponsor's expense. The environmental review shall document compliance with [24 CFR Part 58](#), NEPA, and all related laws, authorities, and executive orders. For DR-MHP, HCD is the Responsible Entity and will review Sponsor-submitted Environmental Review Records (ERR) for compliance with [24 CFR Part 58](#) requirements prior to submitting a Request for Release Of Funds (RROF) to HUD. HUD shall grant the authority to use funds. The conversion to Exempt must be documented and documentation must be submitted to the Department as part of the ERR. Sponsors are also responsible for working with the City or County where the Project is located to ensure compliance with CEQA, including the submission or designation of applicable waivers to the CEQA Clearinghouse with a copy to HCD. Pursuant to [87 FRN 6364](#), HCD may accept another federal agency's environmental review. The DR-MHP will not provide funding for Projects that have a Finding of Significant Impact (FOSI). For a Project located on Native American Lands, the Department will be the lead agency and will prepare any exemption documentation for all other

Projects subject to CEQA. The lead agency shall document Project compliance. No work may start on a proposed Project, or proposed site acquisition, if applicable, before both the federal and state environmental review processes are completed, even if that work/acquisition is being done using non-federal funds. Subsequent to submission of an application by a Sponsor to HCD for the use of DR-MHP funds, there can be no **choice-limiting actions** on the part of the Sponsor/Developer/owner until environmental clearance is received in the form of an Authority to Use Grant Funds (AUGF) or environmental clearance letter issued by HUD or the Department. The concept of prohibiting “**choice-limiting**” actions is to prevent the Sponsor/Developer/owner from investing in a Project before all necessary environmental clearances are obtained. Market studies, environmental studies, plan development, engineering or design costs, inspections and tests are not considered “choice-limiting” actions. “**Choice-limiting actions**” are defined as any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives, such as acquisition of the Project property by the Sponsor/Developer/owner (or any subsidiary of the Sponsor), construction, demolition of buildings, or rehabilitation or reconstruction of buildings. Per 24 CFR Part 58.22, failure to comply with the prohibition against committing funds or taking physical action (using either HUD funds or non-HUD funds) before the completion of the environmental review process could result in loss of HUD assistance, cancellation of the Project, reimbursement by the Sponsor/owner to HUD for the amount expended, or suspension of the disbursement of funds for the affected activity.

#### Procedures:

To process the environmental review for each Project:

1. Sponsors must submit all [Environmental Review Records](#) (ERRs) and request for release of funds (RROF), if applicable, to HCD for review at submission of the Project application (if available) or following Project approval by HCD. [HUD provides guidance on preparation of ERRs on its website.](#)
2. Upon receipt, review and approval of a completed ERR, HCD will publish the Notice of Intent – Request for Release Of Funds (NOI-RROF) and process the RROF to HUD. Alternatively, for Categorically Excluded, Subject to Part 58.5 reviews, HCD may issue an environmental clearance letter to the Sponsor.
3. Upon receipt of the AUGF from HUD or HCD’s issuance of the environmental clearance letter, HCD and the Sponsor may enter into a Standard Agreement and Sponsor may incur Project costs and drawdown funds.

## Section 3. General Requirements

In preparing and submitting applications in response to a NOFA covered by these Policies and Procedures, and during the term of any Standard Agreement awarded pursuant thereto, Sponsor shall at all times comply with the General Requirements of Section 3 of this document, as applicable.

### 3.1 Construction Standards/Requirements

All residential construction Projects, where applicable, must comply with the housing construction codes of the State of California. All units developed under DR-MHP must meet these codes as well as any locally-adopted codes and ordinances. Housing construction codes for building in California follow federal and state laws, regulations, and adaptations for construction of single family and multifamily units. The State Housing Law Program within HCD continuously refines the building standards to ensure they comply with new or changing laws and regulations and develops statewide building standards for new construction of all building types and accessories. The State Housing Law Program also develops the building standards necessary to provide accessibility in the design and construction of all housing other than publicly funded housing. The building standards are published as the California Building Standards Code under the California Code of Regulations, Title 24, and construction standards in the Standard Agreement must meet or exceed all applicable requirements for housing or building construction. Tribal Entities with Projects on Native American Lands are required to follow their own tribal building codes or the International Building Code.

#### 3.1.1 California Building Codes (CBC)

All residential construction Projects, where applicable, shall comply with the housing construction codes of the State of California, including all units developed under DR-MHP. Housing construction codes for building in California follow federal and state laws, regulations, and adaptations for construction of single family and multifamily units.

#### 3.1.2 California Green Buildings Standards Code (CALGreen)

CALGreen is California's first green building code, enacted as mandatory in 2011, and adopted to address five divisions of building construction and improve public health, safety and general welfare. The divisions addressed are as follows: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and environmental quality. CALGreen applies to the planning, design, operation, construction, use, and occupancy of nearly every newly constructed building or structure in the state, as well as additions and alterations to existing buildings that increase the building's conditional area, interior volume, or size.

HCD determined that CALGreen meets the standards as equivalent comprehensive green building program per [87 FRN 6364](#), II.B.2.a. "Green and resilient building standard for new construction and reconstruction of housing" and has received HUD concurrence. As a mandatory standard, all

Sponsors are required to follow CALGreen requirements for construction permits and approvals except for a Tribal Entity DR MHP Project located on Native American Land. Sponsors shall ensure access to local verifications that demonstrate CALGreen compliance in the Project plans and in the constructed development at construction closeout.

The most recent CAL Green code, guides, and checklists are available on the State [website](#).

### 3.1.3 Wildland-Urban Interface building codes (WUI codes)

California continues to be a national leader in implementing statewide policy to both prepare for climate change and reduce greenhouse gas emissions and has dedicated substantial resources to mitigating the impacts of climate change. Housing resilience measures are set forth in state legislation, including requirements for local building codes, such as the [Wildland-Urban Interface building codes](#) (WUI codes) addressing wildfire risk since 2005.

In accordance with the Federal Register Notice requirement to support the adoption and enforcement of modern and/or resilient building codes and mitigation of hazard risk, structures located in any Fire Hazard Severity Zone within State Responsibility Areas, any Local Agency Very-High Fire Hazard Severity Zone, or any Wildland Urban Interface Fire Area designated by the enforcing agency must comply with WUI codes, found in [Title 24, Chapter 7a of the California Building Code](#), which offer specific material, design and construction standards to maximize ignition resistance except for a Tribal Entity DR MHP Project located on Native American Land .

### 3.1.4 Resilient Home Construction Standards

Sponsors are strongly encouraged to incorporate Resilient Home Construction Standards, meaning that Projects meet an industry-recognized standard such as those set by the FORTIFIED Home Silver and Bronze levels. The Department will consider any other standard that results in a discounted or reduced hazard insurance rate to be cost reasonable.

### 3.1.5 Americans with Disabilities Act and Physical Accessibility Requirements.

Sponsors shall ensure compliance with all applicable state and federal building codes and accessibility laws and standards. All developments shall adhere to the accessibility requirements set forth in: (i) California Building Code Chapters 11A and 11B; (ii) the federal Fair Housing Act (42 U.S.C. § 3601 et seq.) and its regulations at 24 Code of Federal Regulations part 100 (particularly 24 C.F.R. Section 100.205), and its design and construction requirements, including ANSI A117.1-1986, and the Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994; and (iii) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and its Title II and Title III regulations at 28 Code of Federal Regulations parts 35 and 36; and Section 504 of the

Rehabilitation Act of 1973 (29 U.S.C. § 794) and the implementing HUD regulations at 24 Code of Federal Regulations part 8. In addition, developments shall adhere to either the Uniform Federal Accessibility Standards (UFAS) (24 C.F.R. Section 8.32), or HUD's Alternative Accessibility Standard.

### 3.2 Rent Standards

The maximum rent to be charged based on unit size shall be the annual [Multifamily Tax Subsidy Projects \(MTSP\) Regular Income Rent Limits](#), adjusted for household size and published by County or for DR MHP projects located on Native American Land, the greater of the median income for the Indian area or the United States. The rent to be charged for a DR-MHP Assisted Unit shall correspond to the unit mix chart within the Project application, the Regulatory Agreement or the Declaration of Restrictive Covenant.

If an Affordable Unit receives a Federal or State project-based rental subsidy and a very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

### 3.3 Use of Operating Income

- A. Notwithstanding [UMR Section 8314\(a\)\(1\)](#), first-priority use of operating income remaining after payment of approved current and prior year operating expenses, reserve deposits and mandatory debt service shall be payment of any:
1. Approved deferred Developer Fee, provided that the aggregate of the Developer Fee paid from sources and paid as deferred shall not exceed \$3,500,000, or for projects receiving Low Income Housing Tax Credits, the maximum allowed by TCAC, whichever is higher.
  2. Asset management, partnership management, and similar fees, including fees paid to investors, in an amount not to exceed the sum of:
    - An amount for the current year, equal to \$38,168 for 2023 and increased at the rate of 3.5 percent for each subsequent year, plus
    - Unpaid asset management, partnership management, and similar fees accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and
    - Supportive Services Costs that the UMR would allow to be paid as operating costs, but that other funding sources do not.
- B. Where there is a difference between the provisions of the UMR and these Policies and Procedures, the provisions of these Policies and Procedures shall prevail in the use of operating cash flow. Any operating income remaining after the payments listed in the previous subsection (A) shall be applied in accordance

with UMR Section 8314(a)(2).

C. The requirements of UMR Section 8314(b) through 8314(h) shall apply.

### 3.4 State and Federal Laws, Rules, Guidelines, and Regulations

#### 3.4.1 State Prevailing Wage

When applicable, Sponsor shall ensure that the requirements of [California Labor Code](#) Chapter 1, commencing with Section 1720, Part 7 pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations (“DIR”) are met. Projects may be exempt from these requirements under State Prevailing Wage rules; accordingly, Sponsors should thoroughly evaluate the California Labor Code with their counsel and consult DIR as necessary to determine if the Project qualifies for any exemption based on the Project’s unique attributes.

For the purposes of this requirement "construction work" includes, but is not limited to rehabilitation, alteration, demolition, installation, or repair done under contract and paid for, in whole or in part, through this Agreement. All construction work shall be done through the use of a written contract with a properly licensed building contractor incorporating these requirements (the "Construction Contract"). Where the Construction Contract will be between the Sponsor and a licensed building contractor, the Sponsor shall serve as the "awarding body" as that term is defined in the California Labor Code. Where the Sponsor will provide funds to a third party that will enter into the Construction Contract with a licensed building contractor, the third party shall serve as the "awarding body."

The applicable wage rate determination on construction work will be the more restrictive of the rate prescribed in the California Labor Code Sections 1770-1784 or the Davis-Bacon Wage Determination. HCD does not make determinations of any wage rates. The California DIR publishes prevailing wage rates for the State and the U.S. Department of Labor publishes the Davis-Bacon prevailing wage rates.

For Projects located on Native American Land, Project owners may be subject to a Tribally determined prevailing wages (TDW) that has been duly adopted and determined by the Sponsor, pursuant to Section 104, subdivision (b)(3) of NAHASDA. Where Sponsor has a duly adopted TDW, prior to disbursing the DR MHP funds, the Department will require the Sponsor, prior to execution of the Agreement, to submit the following:

- i. A certification of compliance with the TDW and all applicable federal prevailing wage law.
  1. Said certification must verify that prevailing wages have been or will be paid if such payment is required by law; and
  2. an agreement that labor records will be maintained and made available to any enforcement agency upon request; and

3. said certification must be signed by Recipient and its general contractor(s).
- ii. Copy of the TDW adopted by the Recipient;
- iii. Copy of the adopted tribal ordinance, resolution or other document establishing the TDW in accordance with 24 C.F.R. § 1000.16 (e); and
- iv. Copy of the methodology used by the Recipient to determine the TDW and ensure that the TDW law requires the payment of not less than those wage rates the tribe determines to be prevailing.

With compliance of the above stated requirements, the TDW shall be applied in lieu of the DBRA and Sponsor shall not be subject to the civil regulatory California Prevailing Wage Law.

Where a TDW is not available, any other federally funded programs will be guided by the labor standards specified by the DR MHP program and the California Prevailing Wage law as applicable. It is encouraged that the Recipient seek counsel on prevailing wage determinations on a Project-by-Project basis.

#### 3.4.2 Federal Labor Standards

Federally-Assisted Construction Contracts trigger the Davis-Bacon and Related Acts. As required by Section 110 of the Housing and Community Development Act, and as outlined in [HUD Handbook 1344.1 Rev 3](#), Federal Labor Standards Requirements in HUD Programs, Sponsors are responsible for ensuring compliance with Davis-Bacon (DBA) requirements as well as the Copeland Anti-Kickback Act, the Contract Work Hours and Safety Standards Act (CWHSSA) and the Fair Labor Standards Act (FLSA), collectively referred to herein as Davis-Bacon and Related Acts (DBRA). In general, DBRA requires payment of prevailing wages to laborers and mechanics on contracts, financed in whole or in part with CDBG-DR funds on residential Projects that include eight (8) or more units. Advertising for bids, bid solicitation and contracts are to incorporate Davis-Bacon Labor Standards and wage determinations, "Attention of Bidders" paragraph and CDBG-DR Compliance Provisions for Construction Contracts. Please reference the state's [Grant Administration Manual](#), Section XII(E) for additional labor standards procedures and requirements.

#### 3.4.3 Minority and Women Business Enterprise (M/WBE)

Per [2 CFR 200.321](#), Sponsors, contractors, and/or Developers, where applicable, must take all necessary affirmative steps to ensure that minority business, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

1. Placing qualified small and minority businesses and women's business

enterprises on solicitation lists'

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the SBA and the Minority Business Development Agency of the Department of Commerce;
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above;

Sponsor shall collect information from all contractors subcontractors and report all contracts and subcontracts awarded to minority businesses, women's business enterprises and labor surplus area firms to HCD on an annual basis.

#### 3.4.4 Section 3 of the HUD Act of 1968

Section 3 is a provision of the HUD Act of 1968 (implementing regulation at [24 CFR Part 75](#)) that helps foster local economic development, neighborhood economic development, and individual self-sufficiency. Section 3 requires recipients of HUD housing and community development financial assistance to provide job training, employment and contracting to the greatest extent feasible, for low- or very low-income residents in connection with projects and activities in their neighborhoods. Projects assisted with DR-MHP funds in excess of \$200,000 trigger Section 3 requirements. When triggered, best efforts must be made to extend Section 3 opportunities to verified Section 3 residents and business concerns to meet these minimum numeric goals: (1) Twenty-five percent (25%) of the total hours worked on a Section 3 project must be worked by Section 3 workers; and (2) Five percent (5%) of the total hours worked on a Section 3 project must be worked by Targeted Section 3 workers.

The Sponsor and the Sponsor's Contractors and consultants shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (HDA), and implementing regulation at 24 CFR, Part 75, where applicable. Tribal Entity Applicants are exempt from the requirements of Section 3 of the HDA and are permitted to comply with Indian preference requirements as set forth in 25 CFR. 1000.42.

The responsibilities outlined in 24 CFR Part 75.19 include:

Implementing procedures designed to notify Section 3 workers about training and employment opportunities generated by Section 3 covered assistance

and Section 3 business concerns about contracting opportunities generated by Section 3 covered assistance.

Notifying potential Contractors for Section 3 covered projects of the requirements of Part 75, Subpart C and incorporating the Section 3 clause set forth below in all solicitations and contracts.

### Section 3 Clause

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

The contractor acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program

Regulatory Agreement, Declaration of Restrictive Covenant, or contracts.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The contractor agrees to submit, and shall require its subcontractors to submit to them, annual reports detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 workers and Targeted Section 3 workers.

The Sponsor's Project Completion Report shall also include a Section 3 Summary Report of the total number of labor hours worked by all contractors and subcontractors, the total number of labor hours worked by Section 3 workers, and the total number of labor hours worked by Targeted Section 3 workers, as required pursuant to 24 CFR 75.25(a). In the event that the number of Section 3 worker labor hours divided by the total labor hours worked by all workers on a Section 3 project does not meet or exceed HUD's Twenty-five percent (25%) standard, and/or that the number of Section 3 targeted worker labor hours divided by the total labor hours worked by all workers on a Section 3 project does not meet or exceed HUD's Five percent (5%) standard, Sponsor shall provide additional reporting on the qualitative nature of its activities and those its contractors and subcontractors pursued, as defined at 24 CFR 75.25(b).

The standards for hours worked by Section 3 Workers and Targeted Section 3 Workers are subject to change by HUD as published in the Federal Register.

#### 3.4.5 National Floodplain Elevation Standards

Sponsors must comply with the national floodplain elevation standards for new construction, repair of substantially damaged structures, or substantial improvements to residential structures in flood hazard areas. All structures designed for residential use within a 100-year (or one percent annual chance) floodplain will be elevated with the lowest floor at least two feet above the base flood elevation level and comply with the requirements of [87 FRN 6364](#), Section II.B.2.c. "Elevation standards for new construction, reconstruction, and rehabilitation of substantial damage, or rehabilitation resulting in substantial improvements" as well as Executive Order 11988 and [24 CFR](#)

[Part 55](#). Additionally, Sponsors with Projects approved to build within a 100-year floodplain must obtain and maintain flood insurance in perpetuity, per part [24 CFR Part 58.6](#), as a condition of federal assistance.

#### 3.4.6 Broadband Infrastructure

Per [87 FRN 6364](#), Section II.B.2.d. “Broadband infrastructure in housing” any substantial rehabilitation or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the Sponsor documents that: 1) The location of the Project makes installation of broadband infrastructure infeasible; 2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or 3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

#### 3.4.7 Uniform Relocation Assistance and Real Property Acquisition Act (“URA”)

The URA contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project in which HUD financial assistance is provided. The implementing regulations, [49 CFR Part 24](#), include steps which must be taken with tenant occupants, including those who will not be impacted by the HUD assisted activity. If Sponsor’s Project is located within Native American Lands, Sponsor is exempt from this Section, Section 3.4.7 requirements, and shall comply with federal relocation law, as applicable, including any relocation requirements under NAHASDA at 24 C.F.R. § 1000.14.

#### 3.4.8 Section 104(d)

The one for one-replacement provisions of Section 104(d) of the Housing and Community Project Act of 1974 as amended are applicable, except that these requirements are waived for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation, pursuant to Section IV.F.1 of [2020 CDBG-DR Federal Register/Vol. 87, No. 23 \(PDF\)](#) .

If a Project site is occupied at the time the CDBG-DR application is made, the application must include: 1) an exhibit explaining either that no relocation of tenants will result, or 2) that such relocation will be temporary (supported by an adequately documented estimate of relocation costs), or 3) a written commitment to submit a relocation plan to HCD for approval as a condition precedent to entering into the Standard Agreement, as further discussed in [Section 2.7](#) of this document. In the event HCD determines that no relocation is required, the Sponsor will be required to execute and deliver to HCD a certificate of no relocation.

#### 3.4.9 Prohibition Against Eminent Domain

Per the Federal Register Notice, CDBG-DR funds may not be used to support any Federal, State, or local projects that seek to use the power of eminent

domain, unless eminent domain is employed only for a public use as defined in per [87 FRN 6364](#), Section II.D.7.

#### 3.4.10 Equal Opportunity Requirements and Responsibilities

Where applicable, the following Equal Opportunity Requirements and Responsibilities apply to the Project, unless exempted by other federal laws:

- a. Sponsors that are federally recognized tribes and where Projects are located on Native American Land, are exempted by NAHASDA, 24. C.F.R. Section 1000.12, from compliance with the Equal Opportunity Requirements and Responsibilities set forth below, including but not limited to, the Architectural Barriers Act of 1968, Fair Housing Act, Affirmative Marketing requirements, Title VI of Civil Rights Act of 1964, and Title VIII of the Civil Rights Act of 1968 and the Age Discrimination Act.
- b. Sponsors that do not qualify for the exemption stated above, must comply with all of the following:
  - **Title VI of the Civil Rights Act of 1964:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving federal financial assistance.
  - **Title VII of the Civil Rights Act of 1968 (The Fair Housing Act):** This act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promote fair housing.
  - **Restoration Act of 1987:** This act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, Disability or age in a program or activity which does not directly benefit from such assistance.
  - **Section 109 of Title 1 of the Housing and Community Development Act of 1974 [42 U.S.C. 53091]:** This Section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title 1 of the Act.
  - **The Fair Housing Amendment Act of 1988:** This act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for

those housing developments that qualify as housing for persons age 55 or older.

- **The Age Discrimination Act of 1975:** This act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic.
- **Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on Disability in federally assisted programs. This Section provides that no otherwise qualified individual shall, solely by reason of his or her Disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.
- **The Americans with Disabilities Act of 1990 (ADA):** This act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a Disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.
- **Executive Order 11063:** This executive order provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.
- **Executive Order 11259:** This executive order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.
- **The Equal Employment Opportunity Act:** This act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings federal, state, and local governments under the Civil Rights Act of 1964.
- **The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978:** This

manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.

- **The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002):** This act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.
- **Executive Order 11246:** This executive order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

#### 3.4.11 California's Preservation Notice Law

All Applicants, Sponsors, co-Sponsors, owners, and special purpose entities must, at all times, comply with, and not be in violation of, [California's Preservation Notice Law](#) (Gov. Code, §§ [65863.10](#), [65863.11](#), [65863.13](#)).

For Projects located on Native American Lands, Tribal Entity Sponsor is not subject to the California Preservation Notice Law pursuant to NAHASDA at 25 U.S.C. section 4101 et seq..

#### 3.4.12 Lead-Based Paint Hazards

Activity(ies) performed with assistance provided by HCD are subject to lead-based paint hazard regulations contained in Title 8 (Industrial Relations) and Title 17 (Public Health) of the CCR and [24 CFR, Part 35](#) (Lead Disclosure). Assistance provided under this program shall be made subject to the provisions for the elimination or mitigation of lead-based paint hazards under these regulations. The Sponsor shall be responsible for the notifications, inspections, and clearance certifications required under these regulations, including Tribal Entity Sponsors, pursuant to NAHASDA at 24 C.F.R. § 1000.40. Native American Entities subject to NAHASDA are only required to comply with the Lead Based Paint Position Prevention Act (PPA )24 C.F.R. Part 35, subparts A, B, H, J, K, M and R.

#### Procedures for Compliance with Section 3 (General Requirements):

To document compliance with the General Requirements included in Section 3 of this DR-MHP Policy, the Department shall:

1. With respect to Sections 3.1.1 California Building Codes, 3.1.2 California Green Buildings Standards Code (CALGreen), 3.1.3 Wildland-Urban Interface Building Codes (WUI), and 3.1.5 Americans with Disabilities Act and Physical Accessibility Requirements, the Sponsor/Applicant shall submit complete copies of all building plans to the Department for plan check by the HCD Division of Codes and Standards within 30 days of receipt of the Award Letter.
2. Require the Sponsor and the Project architect to complete and submit a DR-MHP General Requirements and Construction Period Monitoring Checklist and

Certification with the supporting documentation specified in the checklist prior to releasing the final 10 percent loan disbursement specified in Section 5 of this DR-MHP Policy.

## Section 4. Application Procedures

### 4.1 Application Procedures

DR-MHP accepts applications as specified in the NOFA. Applicants must use the Program Portal to submit Project applications. HCD shall:

1. Prepare and publish a NOFA on the State's [Disaster Recovery website](#).
2. Provide NOFA workshop(s) or webinar(s) to orient potential Applicants to the Program application procedures, eligible Projects, threshold requirements, scoring and selection, and award.

The NOFA will specify the steps that are required of the Applicant to submit an application using the Program Portal.

### 4.2 Developer Fee Calculations

- A. For Projects not utilizing low-income housing tax credits, Developer Fee payments shall be the lesser of 15 percent of the project's unadjusted eligible basis and 15 percent of the basis for non-residential costs included in the project allocated on a pro rata basis or two million five hundred thousand dollars (\$2,500,000) pursuant to California Code of Regulations, Title 4, Division 17, Chapter 1, Section 10327, Paragraph (c), sub Paragraph (2), subsection (A).
- B. For Projects not utilizing low-income housing tax credits which restrict for Special Needs Population(s), the greater of 1) 15 Low-Income Units or 2) 25% of the Low-Income Units restricted in the project, the maximum developer fee is the lesser of fifteen percent (15%) of the project's unadjusted eligible basis and fifteen percent (15%) of the basis for non-residential costs included in the project allocated on a pro rata basis or two million eight hundred thousand dollars. (\$2,800,000) pursuant to 4 CCR 10327 (c)(2)(A).
- C. For Projects utilizing either 9% or 4% competitive low-income housing tax credits, Developer Fee payments shall not exceed the amount that may be included in project costs pursuant to California Code of Regulations, Title 4, Division 17, Chapter 1, Section 10327.

### 4.3 Application Deadline, Content, and Application Eligibility Requirements

- A. Applications must be received by the Department by the deadline specified in the NOFA.
- B. Application must be made on a form(s) made available by the Department as described in the NOFA, without modification, requesting the information deemed necessary by the Department to evaluate compliance with these Policies and all applicable statutes, regulations, guidelines, and similar rules.
- C. An application shall be deemed complete when:
  1. The application meets all threshold requirements, as set forth in the NOFA, [Section 2.3 of this document](#), and the application.
  2. The Department is able to review the application and assess the proposed

project's feasibility pursuant to [UMR Section 8310](#).

3. During the application review, Department staff may request clarifying information, provided it does not affect the competitive scoring. Failure to submit all required documents, as set forth in the NOFA or application, may adversely affect the score of the application. Failure to submit documents necessary to demonstrate compliance with threshold requirements are grounds for rejecting an application. Information or documents received after the application submission deadline will not be considered unless specifically requested by the Department.
  4. Applications shall be evaluated for compliance with the threshold and eligibility requirements of these Policies and Procedures, the NOFA, and applicable statutes, regulations, and guidelines, and scored based on the application scoring criteria listed in the Universal Scoring Criteria Appendix to the NOFA. The applications with the highest number of points in their Geographic Set-Aside shall be selected for funding, provided that they meet all threshold and eligibility requirements and achieve specified minimum scores as identified in the NOFA.
- D. HCD reserves the right to amend or withdraw a NOFA or adjust the amount and types of assistance offered without advance notice. Any changes shall be posted on the DR website and/or notification made via DR listserv.

#### 4.4 Universal Scoring Criteria

##### A. Summary

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

<b>Universal Point Score Criteria (Used in Project ranking separate from Threshold Review)</b>		
<b>Criterion</b>		<b>Maximum Score</b>
<b>Universal Scoring Criteria</b>	Extent to Which the Project Serves Households at the Lowest Income Levels	30
	State Policy Priorities	20
	Project Sponsor and Property Management Experience	20
	Project Readiness	27
	Infill / Proximity to Amenities / Sustainable Building Methods	15
	Cost Containment	5
<b>Total Possible Universal Points</b>		<b>117</b>

##### B. Extent to which the Project serves households at the lowest income levels

(30 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 30 points will be awarded based on the Lowest Income Points Table below.
2. Each “Percent of AMI” 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.

Lowest Income Points Table											
Percent of AMI											
Percent of Restricted Units		65%	60%	55%	50%	45%	40%	35%	30%	25%	20% & below
	50%	5	7.5	10	12.5	16.9	17.5	18.75	30	30	30
	45%	5	6.75	9	11.25	16.9	17.5	18.75	30	30	30
	40%	5	6	8	10	15	17.5	18.75	27.5	30	30
	35%	4.4	5.25	7	8.75	13.15	17.5	18.75	25	27.5	30
	30%	3.75	4.5	6	7.5	11.25	15	18.75	22.5	25	30
	25%	3.15	3.75	5	6.25	9.4	12.5	15.65	18.75	21.9	25
	20%	2.5	3	4	5	7.5	10	12.5	15	17.5	20
	15%	1.9	2.25	3	3.75	5.65	7.5	9.4	11.25	13.1	15
	10%	1.25	1.5	2	2.5	3.75	5	6.25	7.5	8.75	10

**To receive any points in this category, at least 10 percent of the Restricted Units must be restricted to households with incomes not exceeding 30 percent of AMI.**

The percentage of restricted units must be rounded to the nearest whole percentage point (i.e. 29.7% rounds to 30.0%).

Example:

10% of units at 30% AMI	7.5
15% of units at 40% AMI	7.5
50% of units at 50% AMI	12.5
25% of units at 65% AMI	3.15
Total Points scored	30.65 (Max 30)

Deeply Affordable Units - those Units with up to 30 percent AMI targeting - cannot be concentrated among a Project's smaller Units. They must be distributed proportionately across all Unit sizes, or, alternately, more heavily represented among larger Units. To ensure a proportional spread of deeply Affordable Units, at least 10 percent of the larger Units in the Project must be provided at 30 percent of AMI, as applicable. So long as the Applicant meets the 10 percent standard Project-wide, the 10 percent standard need not be met among all the smaller Units.

Example:

60 Total Units in Project	Required ELI Units (30% AMI)
18 three-bedroom	2 Units
21 two-bedroom	2 Units
21 one-bedroom	2 Unit
Total (10%)	6 Units

### C. State Policy Priorities

(20 points maximum)

1. (5 points maximum) Five points will be awarded for Projects located in a “High Resource” or “Highest Resource” Area as shown on the TCAC/HCD Opportunity Area Map.

Once Projects receiving 5 points pursuant to paragraph (1) have been ranked according to the scoring criteria and as further described in the NOFA and recommended for award in the amount of 50 percent of all Program funds available in a geographic set-aside region as outlined in Figure 105: Method of Distribution, remaining Projects shall not receive 5 points for meeting the requirements of this paragraph.

2. Total Percentage of DR-MHP funded Units Serving Special Needs Populations (10 points maximum)

Chronically Homeless, Homeless via Coordinated Entry System (CES) or Other Special Needs	
Total percent of DR-MHP funded Units	Points
25%+	10 points
16-24%	9 points
10-15%	8 points

Special Needs or Special Needs Population(s) means one or more of the following groups who need Supportive Services to maintain and stabilize their housing: (1) people with disabilities; (2) At Risk of Homelessness, as defined in 24 CFR Part 578.3; (3) individuals with substance use disorders; (4) frequent users of public health or mental health services, as identified by a public health or mental health agency; (5) individuals who are fleeing domestic violence, sexual assault, and human trafficking; (6) individuals who

are experiencing Homelessness and individuals experiencing Chronic Homelessness as defined under the federal Continuum of Care Program at 24 CFR Part 578.3; (7) homeless youth as defined in Government Code Section 12957, subdivision (e)(2); (8) families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county; (9) individuals exiting from institutional settings or at risk of placement in an institutional setting; (10) Older Adults in Need of Supportive Services; or (11) other specific groups with unique housing needs as determined by the Department.

Special Needs Populations does not include “seniors or veterans” unless they otherwise qualify as a “Special Needs Population” as required by other statutory laws.

3. Public Excess Lands (5 points maximum)

Five points will be awarded if a new construction Project is located on a site designated as excess land under Executive Order N-06-19 or any land declared surplus by a local agency.

- a. For excess state-owned property, the Project must be located on a site selected under EO-N-06-19 to enter into a ground lease with the state to create affordable housing on excess state-owned property.
- b. For surplus land owned by a local agency, including transit agencies:
  - i. Land donations made in fee title must be supported by a transfer agreement and demonstrated written conformance with the Surplus Land Act.
  - ii. Land donations made as a low-cost, long-term lease must be supported by written conformance with Surplus Land Act, and a Post-Negotiation Notice and Proposed Disposition Summary.

**D. Project Sponsor/Applicant and Property Management Experience**

(20 points maximum)

“Projects” as used in paragraph (1) and (2) below means Rental Housing Developments of over five Affordable Units that are subject to a recorded Regulatory Agreement, or, in the case of housing on Native American Land, where federal HUD funds have been utilized in affordable rental developments. Points in paragraphs (1) and (2) will be awarded in the highest applicable category and are not cumulative. For points to be awarded in paragraph (2), an enforceable management agreement executed by both parties for the subject application must be submitted at the time of application.

By applying for and receiving points in these categories, Applicants certify that the property shall be owned and managed by entities with equivalent experience scores for the entire Regulatory Agreement period.

1. Development and Ownership Experience. Applications will be scored based on the number of subsidized rental housing Projects (including tax credit Projects) that the Sponsor/Applicant has completed and operated and whether the Sponsor/Applicant is subject to penalties pursuant to paragraph (3) below.

For completed Projects, a Sponsor/Applicant may include the experience of its controlled affiliated entities or its principals (e.g., employed by, and under the control of the Sponsor/Applicant and responsible for managing development activities), but not the experience of non-management board members. A Sponsor/Applicant may include the experience of a partner (e.g., Joint Venture partners pursuant to Appendix A of the Guidelines) 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/Applicant's role shall require prior written approval by the Department.

If a Sponsor/Applicant 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.

To receive points under this paragraph the following conditions must be met:

- a. Submit a certification that the Projects for which points are requested have maintained Fiscal Integrity for the year in which each Rental Housing Development's last financial statement has been prepared, a positive operating cash flow from typical residential income alone and have funded reserves in accordance with the partnership agreement and any applicable loan documents.

To obtain points for Projects previously owned, a certification must be submitted with respect to the last full year of ownership by the Sponsor/Applicant, along with verification of the number of years that the Project was owned by that Sponsor/Applicant. To obtain points for Projects previously owned, the ending date of ownership or participation must be no more than ten years from the application deadline.

Points are available as follows:

1-2 projects in service more than 3 years, at least one shall be Department- regulated or projects utilizing low-income housing tax credits allocated by TCAC	5 points
3-4 projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be Department- regulated or projects utilizing low-income housing tax credits allocated by TCAC	10 points
5 or more projects in service more than 3 years, of which 1 shall be in service more than 5 years and 2 shall be Department- regulated or projects utilizing low-income housing tax credits allocated by TCAC	15 points
For Special Needs Projects with experience serving Target Population(s) proposed to be served in the application, points are available as described above or as indicated below.	
The Developer shall have three or more years' experience serving the Target Population(s) proposed to be served in the application.	
1 <u>Special Needs</u> project in service more than 3 years	5 points
2-3 Special Needs projects in service more than 3 years, of which 1 shall be in service more than 3 years and 1 shall be Department- regulated or projects utilizing low-income housing tax credits allocated by TCAC	10 points
4 or more Special Needs Projects in service more than 3 years, of which 1 shall be Department- regulated or a project utilizing low-income housing tax credits allocated by TCAC.	15 points

Pursuant to the DR-MHP Policies and Procedures to be developed, Applicants with fewer than four active Rental Housing Developments in service more than three years shall contract with a bona-fide management company which itself earns a minimum total of five Property Management Experience points at the time of application.

- b. To obtain development and ownership experience points, Tribal Entities may contract with a Developer who will not be the Project owner and may receive points commensurate with the Developer's experience pursuant to (a) above.

For purposes of this subparagraph only, a Developer is defined to include an entity pre-approved by the Department that has developed but not owned the requisite number of projects described in (a) above and that

provides the certification described in (a) above for the projects for which experience points are requested. If the projects for which the entity requests experience points do not include two Department-regulated projects in service more than three years, the Tribal Entity shall also contract with a bona-fide management company which itself earns a minimum total of 5 Property Management Experience points at the time of application. For this purpose, only, “develop” shall mean developing the project scope and timeline, securing financing, hiring, or performing the services of a general contractor, and overseeing completion of construction and placement in service as well as asset managing the project for at least three years after construction completion. When seeking the Department’s pre- approval, the entity shall provide fully executed copies of contracts demonstrating the Department’s criteria for “develop” as specified above have been met.

The contract shall be in effect at least until the Project’s stabilized occupancy (90 percent occupancy for single room occupancy (SRO) and Special Needs Projects and 95 percent for all other projects), completion of all permanent loan closings, and achievement of all stabilization milestones of the Project’s ownership agreement. Tribal Entities exercising the option under this subparagraph (B) to contract with a Developer for these experience points shall also contract for asset management for at least the term of the 15-year federal compliance period with an entity that has provided three years of asset management for at least two Department-regulated Projects.

2. Property Management Company Experience. To receive points under this paragraph, the property management company must meet the following conditions:

a. To obtain points for projects previously managed, the ending date of the property management role must be no more than ten years from the application deadline. In addition, the property management experience with a project shall not pre-date the project’s construction completion date. Points are available as follows:

1 project managed over 3 years	1 point
2-4 projects managed over 3 years, of which 1 shall be Department-regulated or projects utilizing low-income housing tax credits allocated by TCAC	2 points
5-7 projects managed over 3 years, of which 1 shall be Department-regulated or projects utilizing low-income housing tax credits allocated by TCAC	3 points

8-10 projects managed over 3 years, of which 2 shall be Department-regulated or projects utilizing low-income housing tax credits allocated by TCAC	4 points
11 or more projects managed over 3 years, of which 2 shall be Department-regulated or projects utilizing low-income housing tax credits allocated by TCAC	5 points
For Special Needs Projects, points are available as described above or as follows:	
4 or more Special Needs Projects in service more than 3 years, of which 1 shall be Department-regulated or a project utilizing low-income housing tax credits allocated by TCAC.	5 Points

When contracting with an experienced property management company under the terms of paragraphs (1) or (2) above, the Sponsor/Applicant or property co- management entity must obtain training in: project operations, on-site certification training in federal fair housing law, and manager certification in Internal Revenue Code (IRC) Section 42 Low Income Housing Credit Program requirements from a CTCAC-approved, nationally recognized entity. Additionally, the experienced property management agent or an equally experienced substitute, must remain for a period of at least three years from the construction completion date (or, for ownership transfers, three years from the sale or transfer date) to allow for at least one HCD monitoring visit to ensure the Project is in compliance with HCD requirements for inspection and monitoring contained in the Regulatory Agreement. Thereafter, the experienced property manager may transfer responsibilities to the remaining general partner or property management firm following formal written approval from HCD.

3. Negative Points – An application will be assessed negative points based on performance penalties assessed pursuant to the Department’s [Negative Points Policy](#) (Administrative Notice Number 2022-01) amended April 3, 2023, as may be amended from time to time. If the Applicant is subject to a negative points assessment based on the criteria outlined in the Department’s Negative Points Policy or is determined to be ineligible for funding, HCD shall notify the Applicant in writing in the initial point score letter.

Negative points will be assessed as a reduction to the score earned under paragraphs (1) and (2) above and will serve as the final score for this criterion. For example, if a Project earns 15 points under paragraph (1) Development and ownership experience and 5 points under paragraph (2) Property Management Company Experience but is assessed 3 negative points, the final score for this criterion would be 17 (15 + 5 - 3).

If the Sponsor/Applicant is subject to negative points assessment, HCD shall notify the Sponsor/Applicant in writing within the point score letter and will provide opportunity to appeal negative points assessment pursuant to the appeals process as set forth in the NOFA.

## **E. Project Readiness**

(27 points maximum)

Points will be awarded to Projects under each of the following rating factors as documented in the application and as indicated below. If a particular rating factor is not applicable, full points shall be awarded in that category.

### **1. Financing Commitments (10 points maximum)**

a. Five points will be awarded for evidencing Enforceable Funding Commitments for all construction financing, excluding:

- i. funds applied for under the DR-MHP NOFA;
- ii. an allocation of tax-exempt bonds; and
- iii. 4 percent or 9 percent tax credits.

For Projects with bond financing, lender commitment of bond financing is required for these points.

b. Five points will be awarded for evidence of Enforceable Funding Commitments for all permanent financing, grants, project-based rental assistance, and operating subsidies, excluding: funds applied for under the DR-MHP NOFA, an allocation of tax-exempt bonds, and 4 percent or 9 percent tax credits. For Projects with bond financing, any applicable permanent lender commitment of bond financing is required for these points.

For both construction financing commitments and permanent financing commitments, the assistance will be deemed to be an Enforceable Funding Commitment as this term is defined in the Program Policies and Procedures, if it has been awarded to the Project or if the Department approves other evidence that the assistance will be reliably available. Contingencies in commitment documents based upon the receipt of an allocation of tax-exempt bonds, 4 percent tax credits or 9 percent tax credits will not disqualify a source from being counted as committed.

To receive points under paragraphs (a) and (b) above for deferred payment financing, grant funds, or subsidies from other Department programs, these

funds must be awarded prior to finalizing the preliminary point scoring of applications under the DR- MHP NOFA.

2. Local and Environmental Approvals (15 points maximum)

- a. Land use approvals (10 points maximum) – Points will be awarded under item i, ii, or iii below.
  - i. Ten points will be awarded for obtaining all land use approvals or entitlements necessary prior to issuance of a building permit, including any required discretionary approvals. Notwithstanding this requirement, design review, variances, and development agreements are not required to be completed. Project sites where the planning department confirms eligibility for streamlined ministerial approval (including but not limited to the Senate Bill 35 (2017) Streamlined Ministerial Approval Processing) are eligible for these points.
  - ii. Five 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 nor disapproved.
  - iii. 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.
- b. Environmental Approvals (5 points maximum) – Points will be awarded for submission of a local certification of California Environmental Quality Act (CEQA) exemption or completion and submission of:
  - i. A Complete Draft Environmental Assessment with source documentation;
  - ii. A Complete Draft National Environmental Policy Act (NEPA) Categorically Excluded – Subject to 58.5 review with source documentation; or
  - iii. A signed Authority to Use Grant Funds from HUD or other appropriate federal agency, supported with the underlying environmental review document and source documentation.

**Note:** The Project's NEPA Authority to Use Grant funds must be received prior to the construction loan closing. It is not necessary to have the Authority to Use Grant Funds at the application stage.

3. Organizational Documents (2 points maximum) – Points will be awarded if the ultimate borrowing entity, including all affiliated entities, is fully formed and all required organizational documents are submitted with the application.

**F. Infill / Proximity to Amenities / Sustainable Building Methods**

(15 points maximum)

Applications will receive 5 points for each of paragraphs 1-3 of the following three conditions, up to a maximum of 15 points as defined below:

- Infill development and Net Density
- Proximity to amenities
- Sustainable building methods

1. Infill development and Net Density. Five points will be awarded for infill development located in a developed area served with public infrastructure. The Project must meet one of the following requirements of (a) or (b) below:

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.

- b. Developed at average residential Net Densities on the parcels to be developed that are greater than the densities described below:
  - i. For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 20 Units per acre.
  - ii. For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 15 Units per acre.
  - iii. For a suburban jurisdiction: sites allowing at least 25 Units per acre.
  - iv. For a jurisdiction in a metropolitan county: sites allowing at least 45 Units per acre.
  - v. For a Rural Area: sites allowing at least 15 Units per acre.

2. Proximity to amenities. Maximum of 5 points.

Projects will receive 1/3 point per site amenity point that would be awarded under TCAC Regulations, Title 4 CCR, Division 17, Chapter 1, Section 10325(c)(4)(A) or successor regulation (In TCAC regulations, this is a 15-point category, however, achieving all 15 points under TCAC translates to 5 points under this category).

Transit points must be for a Transit Station or Major Transit Stop and distance must be measured by a Walkable Route.

3. Sustainable building methods. Points will be awarded based on the following (up to a maximum of 5 points):

- a. 2.5 points will be awarded if the Project supports the implementation of a sustainable community's strategy or alternative planning strategy that has been determined by the California Air Resources Board to achieve the region's greenhouse gas emissions target or other adopted regional growth plan intended to foster land use. Consistency with such plans must be demonstrated by a letter or resolution executed by an officer or an equivalent representative from the metropolitan planning organization, regional transportation agency, planning, or local transportation commission.
- b. If a sustainable community's strategy is not required for a region by law, 2.5 points will be awarded if the Project supports a regional plan that includes policies and programs to reduce greenhouse gas emissions. Evidence of consistency with such plans must be demonstrated by a letter or resolution executed by an officer of, or an equivalent representative from, the metropolitan planning organization or regional transportation planning agency or local transportation commission.

- c. A Project in which not less than 50 percent of the land area is within a Transit Priority Area shall receive 2.5 points. Evidence of Project location within, or partially within, a Transit Priority Area must be demonstrated by a letter or resolution executed by an officer of, or an equivalent representative from, the metropolitan planning organization, regional transportation planning agency, or local transportation commission.
- d. Five points will be awarded for a Project that is designed to achieve green building status beyond State mandatory building code requirements as verified upon construction completion by a certified LEED Green rater, certified Green Point rater, or licensed engineer. Applicants may select from the following green building certification programs:

Program	Minimum Required Tier or Designation
CalGreen	Tier 2
U.S. Green Building Council LEED Certification	Gold
Green Point Rated	New Construction: Gold Rehabilitation: Whole Building
ENERGY STAR	Certified Home
Living Future Challenge	Living Building

- e. Three points for Projects that achieve near electrification – Projects where two out of three of the major energy appliances (cook stoves, space heating, water heating) are electric. Projects must be wired to be electric-ready, defined as having 240 volts outlets near each gas appliance.
- f. Five points will be awarded for Projects that are powered entirely through electricity with no connections to natural gas infrastructure.

**G. Cost Containment**

(5 points maximum)

A project shall receive 1 point for each full percent that the Project’s eligible basis is less than the Project’s adjusted threshold basis limit, up to a maximum of 5 points. The percentage is calculated by dividing the Project’s eligible basis by the Project’s adjusted threshold basis limit.

$$\frac{\text{Total Eligible Basis per the Development Budget}}{\text{Adjusted Threshold Basis Limit}}$$

(Per California Debt Limit Allocation Committee (CDLAC) Regulation  
Section 5230)

For purposes of this subdivision, a Project's adjusted threshold basis limit shall be the Project's threshold basis limit, as if it were a 4 percent LIHTC project, as determined pursuant to Section 10327(c)(5) of the TCAC regulations, except that the increase for deeper targeting pursuant to Section 10327(c)(5)(C) of the TCAC regulations that is multiplied by the unadjusted threshold basis limit shall be limited to 80 percent. Section 10327(c)(5) of the TCAC regulations states that for Projects financed through CDLAC, "an increase of one percent in the threshold basis limits shall be available for every 1 percent of the project's Low-Income and Market Rate Units that will be income and rent restricted at or below 50 percent but above 35 percent of AMI. An increase of 2 percent shall be available for every 1 percent of the project's Low-Income and Market Rate Units that will be restricted at or below 35 percent of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years (50 years for projects located on Tribal Trust Land)." The Department, however, will only restrict to income levels in 5 percent increments.

Any Project may be subject to performance penalties if the Project's total eligible basis determined upon construction completion exceeds the revised total adjusted threshold basis limits for the year the Project completes construction (or the original total eligible threshold basis limit if higher) by 40 percent.

#### **H. Tiebreaker Score**

(5 points maximum)

In the event of tied point scores, the Department shall rank tied applications based on three factors which will be implemented in sequence. The three factors are: (1) the lowest weighted average affordability of all residential Units, (2) leverage of other funds, and (3) additional cost containment. If after review of the first factor the application(s) remain tied, the second factor shall be calculated. If after review of the second factor, the application(s) remain tied, the third factor shall be calculated. The tiebreaker scoring calculation is explained below.

1. Lowest weighted average affordability of all residential Units.
  - a. Multiply each income limit applicable to the Project by the number of adjusted residential Units restricted at that income level (market rate Units, which do not include Units subject to Rent and/or occupancy restrictions at 70 percent or 80 percent AMI, shall be designated 100 percent AMI). Unrestricted Manager's Unit(s) are excluded from this calculation.

To calculate adjusted residential Units, multiply the residential Units of a Unit Type (bedroom count) by the following adjustment factors:

Unit Type	Adjustment Factor
Studio/SRO	0.90
1-Bedroom	1.00
2-Bedroom	1.25
3-Bedroom	1.50
4-Bedroom or larger	1.75

For purposes of this calculation:

- Units with federal project-based rental assistance shall be assigned targeted Rent levels of 30 percent AMI regardless of their actual income targeting; and
  - If the average affordability of all unadjusted residential Units, exclusive of Units with rental assistance, is less than 40 percent AMI, then the calculation shall assume a targeted Rent level of 40 percent AMI for each residential Unit that does not have rental assistance.
- b. Add the products calculated pursuant to the previous paragraph.
  - c. Divide the sum calculated pursuant to the previous paragraph by the total number of adjusted residential Units in the Project to obtain the average affordability.
  - d. Subtract (c) from 1.0.
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 Project development cost.

Local public land donations will be counted as leveraged funds where the value is established with a current appraisal, with the amount discounted to reflect a purchase price that is lower than the appraised value, or any fees, or other reliably predictable payments required as a condition of the donation.
  - b. The capitalized value of Rent differentials attributable to public project-based rental or public operating subsidies, based upon TCAC underwriting standards. Standards shall include the following and shall be annually aligned with TCAC standards for these capitalized values to the extent possible: a 15-year loan term; an interest rate based upon a spread over 10-

year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent vacancy rate.

The rental income differential for subsidized Units shall be established by subtracting rental income at 40 percent AMI levels (30 percent AMI for Special Needs Units with project-based rental assistance) from the committed contract Rent income documented by the subsidy source. In the case of a USDA rental subsidy only, the contract Rent income is the higher of 60 percent AMI rents or the committed contract USDA Basic rents. The committed contract Rent income for Units with existing project-based Section 8 rental subsidy shall be documented by the current monthly contract Rent in place at the time of the application or by contract Rent committed to and approved by the subsidy source (HUD); Rent from a Rent comparable study or post-Rehabilitation Rent shall not be permitted.

The Rent differential for Projects with public operating subsidies shall equal the annual subsidy amount in year one, provided the subsidy will be of a similar amount in succeeding years, or the aggregate subsidy amount of the contract divided by the number of years in the contract if the contract does not specify an annual subsidy amount.

- c. Add the sum of all eligible soft funds as set forth in paragraphs (a), (b) and (c).
  - d. Divide (d) by total Project development cost and express as a decimal.
3. Additional Cost Containment. The “additional cost containment” category for the Tiebreaker follows the same methodology as the Cost Containment scoring category above, in Scoring Category G. This factor is calculated by dividing the Project’s eligible basis by the Project’s adjusted threshold basis limit as illustrated below:

$$\frac{\text{Total Eligible Basis per the Development Budget}}{\text{Adjusted Threshold Basis Limit}}$$

(Per CDLAC Regulation Section 5230)

For purposes of this subdivision, a Project's adjusted threshold basis limit shall be the Project's threshold basis limit, as if it were a 4 percent LIHTC Project, as determined pursuant to Section 10327(c)(5) of the TCAC regulations, except that the increase for deeper targeting pursuant to Section 10327(c)(5)(C) of the TCAC regulations that is multiplied by the unadjusted threshold basis limit shall be limited to 80 percent. Section 10327(c)(5) of the TCAC regulations states that for Projects financed through CDLAC, “an increase of one percent in the threshold basis limits shall be available for every 1% of the Project's Low-

Income and Market Rate Units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the Project's Low-Income and Market Rate Units that will be restricted at or below 35% of AMI. In addition, the Applicant must agree to maintain the affordability period of the Project for 55 years (50 years for Projects located on tribal trust land)." The Department, however, will only restrict to income levels in 5 percent increments.

Percentages shall not include any percentage points requested or awarded (up to 5 percent) pursuant to the Cost Containment point category. The maximum percentage shall be 25 percent.

Note: Any Sponsor may be subject to future performance penalties if the Project's total eligible basis determined upon construction completion exceeds the revised total adjusted threshold basis limits for the year the Project completes construction (or the original total eligible threshold basis limit if higher) by 40 percent.

The calculation in this paragraph (3) is multiplied by 0.75

#### 4.5 Project Selection

The Department will announce Project awards subsequent to completion of four (4) phases of review: threshold review, rating and ranking, feasibility review, and approval by the Department's Internal Loan Committee (ILC).

##### 4.5.1 Threshold Review

The Department will review each application to ensure that all required fields in the Program Portal are filled out appropriately, that an application workbook is uploaded and that the upload is readable and completed (either the CTCAC Application Workbook or the Universal Application Workbook), and that all other required uploads are present and legible.

The Department will review each application and its contents to ensure that it meets the minimum threshold requirements listed in [Section 2.3 of this document](#). Applications that fail to meet the threshold requirements shall be disqualified and shall receive a Disqualification Letter sent via email to the Applicant point of contact listed in the Application.

Applicants receiving a Disqualification Letter shall have five (5) calendar days to appeal the Department's determination, as specified in the Disqualification Letter. Any appeals shall state all relevant facts, arguments, and evidence upon which the appeal is based. Furthermore, the Applicant must provide a detailed reference to the area(s) of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be accepted if this information would result in a competitive advantage to an Applicant. Appeals shall be reviewed by the Program Manager and forwarded

with a recommendation to the Section Manager for a decision. The Applicant point of contact shall be notified of the Department's decision concerning any appeal.

All other applicants that meet the threshold requirements shall receive a Threshold Determination Letter sent via email to the Applicant point of contact listed in the Application, and these applications will be considered during the rating and ranking phase.

#### 4.5.2 Rating and Ranking

The Department will prepare an initial rating and ranking of applications based on a review of each application within a Geographic Set-Aside area against the Universal Scoring Criteria. The results of this initial rating and ranking shall be documented in an Initial Points Score Letter sent via email to the Applicant point of contact listed in the Application. The Initial Points Score Letters will provide the Applicant's score and rank within their Geographic Set-Aside area.

Applicants shall have a period of five (5) calendar days to appeal the Initial Points Score Letter. Any appeals shall state all relevant facts, arguments, and evidence upon which the appeal is based. Furthermore, the Applicant must provide a detailed reference to the area(s) of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be accepted if this information would result in a competitive advantage to an Applicant. Appeals shall be reviewed by the Program Manager and forwarded with a recommendation to the Section Manager for a decision.

Subsequent to the appeals process, Final Points Score Letters shall be sent via email to the Applicant point of contact listed in the Application. The Final Points Score Letters will provide the Applicant's score and rank within their Geographic Set-Aside area.

#### 4.5.3 Feasibility Review

The Department will conduct a feasibility review of the top-scoring applications to verify the proposed award amount and generate project reports. Project reports shall be reviewed by the Program Manager, Section Manager, Branch Chief, and Legal Affairs Division.

#### 4.5.4 Internal Loan Committee

The Department will submit recommended Projects to the ILC for consideration. The decision of the ILC shall be final.

#### 4.5.5 Award Letters

The Department will announce Project awards by issuing an Award Letter sent via email to the Applicant point of contact listed in the Application.

### 4.6 Appeals

There are two (2) opportunities to appeal the Department's decisions concerning

DR-MHP applications: after threshold review is completed; and upon receipt of the Initial Points Score Letter. Applicants must submit their appeal in written form, via email, five (5) calendar days from receipt of either a Disqualification Letter or an Initial Points Score Letter. The email address where appeals must be submitted will be specified in the Disqualification Letter or the Initial Points Score Letter. Appeals shall state all relevant facts, arguments, and evidence upon which the appeal is based. Furthermore, the Applicant must provide a detailed reference to the area(s) of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be accepted if this information would result in a competitive advantage to an Applicant.

#### 4.7 Complaints

Should any Applicant or member of the public have complaints concerning the award or administration of DR-MHP funds, complaints should be addressed in writing to:

*Department of Housing and Community Development (HCD)  
Attn: DR-MHP Program Manager  
P.O. Box 952054 Sacramento, CA 94252-2054*

An authorized person of the Department shall acknowledge the complaint in writing or electronic correspondence within 30 calendar days.

#### 4.8 Providing Technical Assistance

HCD provides various types of technical assistance (TA) to Sponsors participating in DR-MHP from the release of the NOFA to closeout. The objective of technical assistance is to develop a strong partnership with Sponsors and support the implementation of a successful program. TA also assists Sponsors to maintain their day-to-day compliance with federal and state regulations and program requirements as they develop DR-MHP Projects.

Initially, TA to the Sponsor begins during the NOFA process with NOFA workshop(s) or webinar(s) to help Applicants develop a clear understanding of the application and program requirements. TA continues after the Award is made as Sponsors complete the Environmental Review process, secure all necessary funding, and proceed to loan closing. During project construction, HCD provides TA to Sponsors to ensure that Funding Requests are properly documented and that affirmative marketing procedures are followed. During lease-up, HCD provides TA to Sponsors to ensure that tenant selection plan procedures are followed and that project closeout documentation is submitted timely.

## Section 5. Operations

### 5.1 Performance Deadlines

- A. The application process dates and deadlines shall be published in the NOFA.
- B. Awarded projects that require 4 percent or 9 percent tax credits shall have no more than three (3) tax credit rounds or 18 months from the date of the DR-MHP award to secure tax credits or fill the funding gap before the DR-MHP award expires.
- C. Awarded projects shall have 20 months from the date of the DR-MHP award to complete construction loan closing, unless the Project has received tax credits and the reservation readiness deadline exceeds the 20 months.
- D. Subsequent to the expiration of any awards made pursuant to a NOFA, the remaining funds may, at HCD's discretion, be pooled and all previously awarded projects with a remaining gap may be considered for funding based on their original NOFA score, in rank order, without regard to NOFA Regional Set-Aside, to fill the funding gap.
  - Such Projects receiving pooled funding shall have six (6) months to complete construction loan closing.
- E. Projects shall have 18 months from loan closing to complete construction. HCD may, at its sole discretion, grant extensions if the Sponsor has been operating in good faith with the Department and the delay is based on factors impacting the project timeline that are determined to be outside of the Sponsor's control.
- F. Projects receiving Low Income Housing Tax Credits shall have twelve (12) months from construction completion to submit project closeout information. Otherwise, Projects will have six (6) month to submit project closeout information.
- G. The 55-year affordability period shall commence upon HCD's approval of the Sponsor's submitted project closeout information.

### 5.2 Conditions Precedent to the Standard Agreement

Once HCD selects projects and announces awards, the following conditions shall be met prior to entering into a Standard Agreement:

- All sources of funding required to develop and operate the Project with positive cashflow for the duration of the affordability period must be identified, documented as committed, and accessible prior to the Department entering into a Standard Agreement.
- The proposed Project must successfully meet environmental review clearance and receive an Authority to Use Grant Funds (AUGF) or environmental clearance letter from the Department prior to the Department entering into a Standard Agreement.

- Authorizing resolutions of the governing boards of both the Sponsor and a co-Sponsor (except where the Sponsor(s) are individuals) shall be provided, and must be approved by the Department, prior to issuance of a Standard Agreement.
- For Projects located on Tribal Trust/Restricted Land or Rancheria, BIA approval of any ground lease that establishes site control.
- Any other administrative actions identified by HCD that need to be completed prior to entering into a Standard Agreement.

### 5.3 AB 1010 Waivers for Tribal Entities

AB 1010 (HSC 50406(p)) allows HCD to modify state financing requirements to ensure program compatibility when provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure would cause a violation or not satisfy the requirements of any state financing. AB 1010 also allows HCD to waive state financing requirements to avoid an unnecessary administrative burden when provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity legal structure or agency create minor inconsistencies with state financing requirements. Tribal Entities are encouraged to submit AB 1010 requests if provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure would cause the Tribal Entity to fail to satisfy any of the requirements set forth in this NOFA or any of the rules, standards, or criteria set forth in the DR-MHP Policies and Procedures.

A list of previously approved AB 1010 waivers can be viewed on HCD's Tribal Affairs webpage. For any questions about the AB 1010 process or how to submit an AB 1010 waiver or modification request, please reach out to the California Indian Assistance Program at [CIAP@hcd.ca.gov](mailto:CIAP@hcd.ca.gov).

### 5.4 Legal Documents

- A. HCD shall enter into a Standard Agreement with the Sponsor constituting a firm commitment of funds. This agreement defines programmatic and financial requirements as well as remedies to correct deficient or non-compliant Projects. The agreement also contains CDBG-DR recapture provisions for non-performance or breach of Sponsor responsibility on any requirements, including adherence to CDBG-DR requirements. The Standard Agreement shall contain, but not be limited to, the following:
  - A description of the Sponsor's program implementation responsibilities, including but not limited to, Project development, marketing, lease-up, closeout, and long-term compliance;
  - The amount and terms of the funding;
  - The approved Project development budget and sources and uses of funds and financing;
  - The approved Project development schedule establishing timelines and

milestones;

- Provisions regarding tenant relocation;
  - Provisions governing the construction work;
  - Terms and conditions required by federal or state law;
  - Total number of units, Affordable Units and DR-MHP Assisted Units;
  - The approved schedule of the Project, including land acquisition, if any, commencement and completion of construction work, and occupancy by eligible Households;
  - The manner, timing and conditions for disbursement of Project funds, including that HCD shall withhold an amount equal to 10% of the total DR-MHP Loan as retainage. The 10% retainage shall be released to the Sponsor upon receipt and approval by HCD of all required and approved Project closeout documents identified in the Standard Agreement;
  - Reporting and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist HCD in meeting HUD's recordkeeping and reporting requirements;
  - Terms and conditions for the inspection and monitoring of the Project in order to verify compliance with the requirements of the program;
  - Provisions regarding the recapture of funds;
  - Requirements for multiyear property and hazard insurance policies;
  - Provisions relating to the erection and placement on or in the vicinity of the Project site a sign indicating that HCD has provided financing for the Project. HCD may also arrange for publicity of the program funds in its sole discretion;
  - Remedies for noncompliance; and
  - The form of the Regulatory Agreement.
- B. A Regulatory Agreement shall be recorded and it shall have priority over all other liens, encumbrances, and other matters of record except as may be approved by the Department in its sole discretion. Exceptions to the lien priority of the DR-MHP Regulatory Agreement must be approved in writing and in advance by the Department. The Regulatory Agreement shall contain, but not be limited to the following:
- 55-year affordability period;
  - Description of the number and type of restricted units;
  - Income targeting;
  - Rent restrictions;
  - Required property standards;

- Annual monitoring requirements; and
  - Records and reports.
- C. A Declaration of Restrictive Covenant shall be approved by the BIA and recorded with the Land Titles of Records Office (LTRO) and shall have priority over all other liens, encumbrances, and other matters of record except as may be approved by the Department in its sole discretion. Exceptions to the lien priority of the DR-MHP Declaration of Restrictive Covenant must be approved in writing and in advance by the Department. The Declaration of Restrictive Covenant shall contain, but not be limited to the following:
- 50-year affordability period;
  - Description of the number and type of restricted units;
  - Income targeting;
  - Rent restrictions;
  - Required property standards;
  - Annual monitoring requirements; and
  - Records and reports.
- D. A Promissory Note shall be executed to make the DR-MHP loan funds available to the project.
- E. A Deed of Trust or any other required form of security instrument shall be recorded to secure HCD's investment in the Project.

#### 5.5 [Agreements with Contractors or Other Parties](#)

- A. Per [2 CFR 200.214](#), Sponsor shall not enter into any agreement, written or oral, with any Contractor, vendor, or other party without the prior determination that the Contractor, vendor, or other party is eligible to receive federal funds and is not listed on the government-wide exclusions in the [System for Award Management \(SAM\)](#). Requirements of an agreement between the Sponsor and any Contractor, vendor or other party shall contain, but not be limited to the following:
- The provisions at [2 CFR Part 200, Appendix II](#).
  - Compliance with all State and federal requirements including those that pertain to labor standards, nondiscrimination, Americans with Disabilities Act, Equal Employment Opportunity and Drug-Free Workplace Act.
  - Maintenance of at least the minimum State-required Workers' Compensation Insurance.
  - Maintenance of unemployment insurance, disability insurance and liability insurance which is reasonable to compensate any person, firm or corporation who may be injured or damaged during the performance of Project activities.

B. Contractors shall:

- Comply with the applicable provisions of the California Labor Code
- Perform the project activities in accordance with federal, state and local housing and building codes, as applicable, and provide or cooperate to complete required reporting.
- Provide security to assure completion of the project(s) by furnishing the borrower and construction lenders with proof of sufficient insurance and performance and payment bonds, or other security approved in advance in writing by the Department, as determined by the particulars of each individual project will be required.

5.6 Disbursement of Funds

A. Payments will be made directly to Sponsors as reimbursements based on the documented and satisfactory completion of Project work. Reimbursement means that Project costs must be incurred by the Sponsor and documented as required by the terms of the Standard Agreement for payment of invoices. Reimbursement requests (Monthly Financial Reports) submitted by the Sponsor must include the following supporting documentation, at minimum:

- Cover letter signed by the person authorized to sign Financial Reports as provided in the Standard Agreement.
- Documentation showing the Project costs incurred during the reporting period. Examples include:

<b>Eligible Cost</b>	<b>Documentation Example</b>
Environmental or A&E design	Vendor invoices, pages from report or deliverable
Permitting fees	Entitlement invoice/bill, issued permit
Developer fees*	Developer invoice, concurrence with milestone
Mobilization, site prep, and clean up*	Vendor invoices, progress photos, narrative reports
Construction costs*	Construction Pay Applications, inspection reports, wage compliance verification, contractor construction invoices
*costs must be incurred after the date of the AUGF	

Please see the state’s CDBG-DR [Grant Administration Manual](#), Section V, as amended from time to time, and relevant [Management Memos](#), as issued, amended, or superseded from time to time for additional financial management procedures and requirements.

B. Pursuant to Section 927 of the California Civil Code (the California Prompt Payment Act), the Department shall pay properly submitted, undisputed invoices within 45 calendar days of initial receipt.

- C. Change Orders. Any changes to the proforma Sources and Uses, including higher costs or cost savings shall be reported in the Monthly Financial Report for HCD review and approval.

## 5.7 Recapture of Funds

A Sponsor may be required to repay all, or a portion of the funds received. The reasons for recapture include, but are not limited to the following:

- A Sponsor does not comply with the terms of the Standard Agreement;
- A Sponsor fails to complete the Project and fails to meet a national objective;
- A Sponsor does not meet the affordability requirements for the 55-year affordability period;
- A Sponsor is found to have used program funds for an ineligible cost; and/or,
- A Sponsor does not report the receipt of additional insurance, SBA, FEMA, non-profit assistance and/or any other Duplication of Benefits received after award.

The method of recapturing funds and the timeframe for doing so are determined on an individual Project basis. However, the recapture method and timeframe will be consistent with [2 CFR part 200](#) or other applicable cost principles. Complete recapture provisions will be included in the Standard Agreement with the Sponsor.

## 5.8 Sales, Transfers, Encumbrances, and Loan Payoff

Sale of a Project during the affordability period is possible; however, affordability periods must still be adhered to and included as a deed restriction.

- A. A Sponsor shall not directly or indirectly 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 of the following requirements are met:
1. The existing Sponsor is in compliance with the Regulatory Agreement or Declaration of Restrictive Covenant, and other loan documents, 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 or Declaration of Restrictive Covenant, and other loan documents 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.
- 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 subparagraph (A) above, 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, but are not limited to:
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; and/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 Section 8308\(g\)](#), this special condition controls, in that no DR-MHP Assisted Project reserve balance can fund a limited partner buyout or exit.
- F. No 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. All of the loan documents, including the Regulatory Agreement or Declaration of Restrictive Covenant and Deed of Trust, shall continue in full force and effect notwithstanding any prepayment, in whole or in part, of the loan.

## 5.9 Defaults and Revocation of Loans

- A. In the event of a breach or violation by the Sponsor of any of the provisions of the Standard Agreement, Regulatory Agreement or the Declaration of Restrictive Covenant, the promissory note, or the Deed of Trust, or any other agreement pertaining to the Project, the Department may give written notice to the Sponsor to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default under the relevant document(s) and may seek legal remedies for the default including the following:
- The Department may accelerate all amounts, including outstanding principal and interest, due under the loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amounts in full, the Department may proceed with a foreclosure in accordance with the provisions of the deed of trust and state law regarding foreclosures.
  - The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to operate the Rental Housing Development in accordance with Program requirements.
  - The Department may seek such other remedies as may be available under the relevant agreement or any law.
  - In the event the Project is or has been awarded additional Department 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.
- B. If the breach or violation involves charging tenants Rent or other charges in excess of those permitted under the Regulatory Agreement or Declaration of Restrictive Covenant, the Department may demand the return of such excess Rents or other charges to the respective households. In any action to enforce the provisions of the Regulatory Agreement or Declaration of Restrictive Covenant, the Department may seek, as an additional remedy, the repayment of such overcharges.
- C. The Department may revoke its commitment of DR-MHP funds prior to entering into a Standard Agreement contract under any of the following conditions:
- The objectives and requirements of the Program cannot be met;
  - Implementation of the Project cannot proceed in a timely fashion in accordance with the approved plans and schedules;
  - Special conditions have not been fulfilled within required time periods;

or

- 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.

- D. Upon receipt of a notice from the Department of intent to revoke its commitment of DR-MHP funds prior to entering a Standard Agreement, the Sponsor shall have the right to appeal to the Director of HCD.
- E. The Department may use its resources to cure or avoid a Sponsor's default on the terms of any loan or other obligation that jeopardizes the Fiscal Integrity of a Project or the Department's security in the Project. Such defaults may include defaults or impending defaults in payments on mortgages, failures to pay taxes, or failures to maintain insurance or required reserves. The payment or advance of funds by the Department pursuant to this subsection shall be solely within the discretion of the Department and no Sponsor or any other person or entity shall be entitled to or have any right to payment of these funds. All funds advanced pursuant to this subsection shall become part of the Program loan and, upon demand, shall be immediately due and payable to the Department. Where it becomes necessary to use Departmental resources to assist a Project to avoid threatened defaults or foreclosures, the Department shall have the right to take those actions necessary, including, but not limited to, foreclosure or forced sale of the Project property, to prevent further, similar occurrences and ensure compliance with the terms of the applicable agreements.

#### 5.10 Management and Maintenance

Sponsors shall operate the approved multifamily housing Project(s), where applicable, in accordance with local requirements, the DR-MHP Policies and Procedures, and as set forth in the executed Standard Agreement and other Legal Documents. Multifamily Projects funded under this CDBG-DR loan will adhere to standard requirements set by HCD to ensure compliance, as well as specific requirements set by the governing federal income limits. HCD will provide technical assistance to Sponsors to ensure compliance with CDBG-DR requirements.

- A. The Sponsor shall be responsible for all management functions of the multifamily housing development including construction, maintenance, selection of the tenants, annual recertification of Household income and size, and managing the units in accordance with program requirements.
- B. The Sponsor is responsible for all repair and maintenance functions of the multifamily housing development, including ordinary maintenance and replacement of capital items. The Sponsor shall ensure maintenance of residential units, commercial space and common areas in accordance with local health, building, and housing codes, and the management plan.

- C. The Sponsor shall ensure that the multifamily housing development is managed by an entity approved by HCD that is actively in the business of managing affordable housing. Any management contract entered into for this purpose shall be subject to HCD approval and contain a provision allowing the Sponsor to terminate the contract upon 30-days' notice. The Sponsor shall terminate said contract as directed by HCD upon determination that management does not comply with program requirements.
- D. The Sponsor shall develop a management plan subject to HCD approval within 90 days of the commencement of construction. For Tribal Entities on Tribal Trust/Restricted Land or Rancheria, that have duly adopted a Tribal Admissions and Occupancy Standard (TAOS) shall be permitted to apply subject to the approval by the Department prior to construction. Any change to the plan shall be subject to the approval of HCD. The plan shall be consistent with program requirements and must include the following:
- The role and responsibility of the Sponsor and its delegation of its authority;
  - Personnel policy and staffing arrangements including key personnel and lines of authority;
  - Plans and procedures for affirmatively marketing all housing units in a manner that ensures equal access to all persons in any category protected by federal, state or local laws governing discrimination, and without regard to any arbitrary factor, and achieving early and continued occupancy;
  - Procedures for determining tenant eligibility and selecting tenants, as well as notifying applicants of eligibility and availability of a DR-MHP Assisted Unit, and for certifying and annually recertifying Household income and size;
  - Plans for carrying out, and budgeting for, an effective maintenance and repair program including a capital needs assessment prepared every 5 years, except that for newly constructed projects, this requirement shall apply beginning with year 10 from issuance of certificate of occupancy;
  - Procedures for notifying ineligible applicants of the reason for their ineligibility;
  - Procedures for maintaining a waiting list of eligible applicants;
  - Rent collection policies and procedures;
  - Policies and Procedures for managing funds that meet generally accepted accounting principles;
  - A program for maintaining adequate accounting records and handling necessary forms and vouchers;
  - Plan for safeguarding all tenant personally identifiable information (PII) such as social security numbers, names, and birthdates, against possible identity theft as applicable.

- Plans for enhancing tenant-management relations;
- The management agreement, if any;
- Provisions for periodic update of the management plan;
- Appeal and grievance procedures;
- Plans for collections for tenant-caused damages, processing evictions and terminations; and
- If applicable, a final Supportive Services Plan for Projects serving Special Needs Populations, including Supportive Housing and/or providing Supportive Services to the general tenant population that includes details outlined in [Section 2.3.8](#) of this document above.

### 5.11 Reporting Requirements

- A. Sponsors will be required to submit reports at times indicated in the Standard Agreement, in accordance with HUD reporting requirements, and via HCD's Program Portal. At a minimum, during the term of the Standard Agreement, on a monthly basis, the Sponsor shall submit to HCD a progress report which addresses the following topics:
- A description of the current status of the Project activity, including number of units leased, and demographics of Households assisted (beneficiaries).
  - A description of activities to be undertaken in the next reporting period.
  - A description of problems or delays encountered in Project implementation and course of action taken to address them.
  - A description of actions taken to achieve Project expenditure deadlines.
  - Compliance with the 24 CFR Part 75 Section 3 requirements, including the number of hours worked on the project by targeted Section 3 workers and Section 3 workers, as more fully described in Section 3.4.4 of this document.
  - A summary of Project fiscal status, including:
    - Award amount,
    - Funds drawn, and,
    - Remaining balance.
- B. At any time during the term of the Standard Agreement, HCD may perform or cause to be performed an independent financial audit of any and all phases of the Sponsor's Project. At HCD's request, the Sponsor shall provide, at its own expense, a financial audit prepared by a certified public accountant.
- C. Sponsors shall provide an annual audit of the Project prepared by an independent certified public accountant.

### 5.12 Annual 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 initial occupancy, the Sponsor shall submit an initial operating budget, SRI, and other documents as requested to the Department. Such budget and SRI 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, the borrowing entity shall operate the Rental Housing Development in accordance with the initial operating budget and SRI, which were approved by the Department prior to permanent 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, demographics, income, current Rent, and proposed Rent adjustments (including utility allowances, if applicable). Such SRI shall provide estimated income projections for DR-MHP Assisted Units, Affordable 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 or Declaration of Restrictive Covenant, 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 borrowing entity's estimates for the upcoming year of Operating Income, Operating Expenses, debt service amounts payable to reserves, and proposed Rent adjustments pursuant to [Section 3.2 of this document](#). 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 in excess of 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-DR-MHP Assisted Units or Commercial Space, all budgets submitted pursuant to this section shall show income and uses of income allocated among DR-MHP Assisted Units, Affordable 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 particular physical, operational, and economic characteristics of the Project.

### 5.13 Monitoring and Compliance

HUD describes monitoring as an integral management control standard and requires any entity receiving HUD funding to monitor and evaluate program performance and compliance, see CDBG Regulation [24 CFR 570.501\(b\)](#) and Office of Management and Budget (OMB) Uniform guidance at [2 CFR 200](#). Therefore, HCD monitors all DR-MHP Projects. HCD is required to ensure that Sponsors comply with all requirements and that they achieve performance objectives on time and within budget. Monitoring enables HCD to verify compliance with both regulatory and performance requirements.

In the event a Sponsor disagrees with a finding and/or any accompanying corrective actions or sanction(s) that are associated with such finding, Sponsor shall follow HCD's appeals process and rights contained in Exhibit 15 of the Department's [Monitoring Plan](#) located on HCD's website.

- A. A reasonable annual fee for compliance monitoring will be charged during the 55-year affordability period as specified in Section 2.4.2 of these Policies and Procedures.
- B. HCD's Asset Management and Compliance (AMC) group shall conduct annual compliance monitoring during the period of affordability, to include review of:
  - 1. Initial Affordable Rents and subsequent rents during the period of affordability
  - 2. Initial and annual certification of tenant income
  - 3. LMI benefit
  - 4. Affirmative Marketing requirements
  - 5. Fair Housing requirements
  - 6. Financial Monitoring, including review the development's financial statements to ensure the development continues to be operated in a fiscally responsible manner, addressing all debt service obligations and

adequately funding Project reserve accounts

#### 5.14 Rent and Unit Designation Adjustment for Over-Income Tenants at Recertification

For DR-MHP Assisted Units:

- A. If, at the time of recertification, a tenant household's income exceeds the income limit designated for the household's Unit, and, to the extent a rent increase for the household is permitted by statutes and regulations governing the low-income housing tax credit program, the Sponsor shall:
  1. Re-designate the tenant's Unit as a Unit at the higher income level;
  2. Increase the tenant's Rent to the level applicable to Units at the higher income level; and
  3. Designate the next available comparable Unit as a Unit at the income level originally applicable to the household until the Unit mix required by the Program Regulatory Agreement or Declaration of Restrictive Covenant is achieved. A Unit shall be deemed "comparable" if it has the same number of bedrooms as the original Unit.

For example, in a Project where the income limits utilized to qualify new tenants are 20 percent, 40 percent, and 50 percent of AMI, if the income of a household occupying a Unit designated as a 20 percent Unit increases to 48 percent of AMI, the Sponsor must re-designate the household's Unit as a Unit at the 50 percent level, increase the tenant's Rent to the level applicable to Units at the 50 percent level, and designate the next available comparable Unit as a Unit at the 20 percent income level.

- B. If, at the time of recertification, a tenant household's income exceeds the income limit designated for the household's Unit but does not exceed the limit for a higher income level applicable to new tenants, the Sponsor may increase the household's Rent to an amount not exceeding the Rent limit applicable to the household's income level at the time of recertification. For purposes of this subsection, income levels shall not be limited to those applicable to new tenants and shall consist of 5 percent increments of AMI. Continuing with the example described in subsection (a), the income levels utilized to establish Rent limits upon recertification would be 20 percent, 25 percent, 30 percent, 35 percent, etc. A household occupying a Unit in this project with a 20 percent limit whose income, upon recertification, had increased to 32 percent of AMI could have their Rent increased to the Rent level applicable to the 35 percent income level. If a household income exceeds the income limit set for the highest restricted income band delineated in the Project's Regulatory Agreement or Declaration of Restrictive Covenant, the unit restriction should be adjusted as appropriate for the household to qualify using 5 percent increments up to the maximum allowed by program regulations, e.g., 65 percent AMI, regardless, of the income bands specified in the Project's Regulatory Agreement or Declaration of Restrictive Covenant

Tenant Rent should be increased based on the new income level designation.

- C. If a tenant household fails to be recertified by size, such family must relocate to the next available appropriately sized unit. In the event that an appropriately sized unit is not available within a reasonable period of time, the foregoing shall not be deemed to limit any other rights or remedies under [UMR Section 8306](#).

#### 5.15 Record Retention

All records and books relating to the initial development phase of the Project (application through project completion) shall be retained for a minimum period of five (5) years after the grant agreement between HUD and the State of California has been closed. Subsequent to closeout of the grant agreement between HUD and the State of California, all records and books relating to the operational phase of the Development shall be retained for the most recent five (5) year period, until five (5) years after the affordability period terminates. All records must be maintained in such a manner as to ensure that the records are reasonably protected from destruction or tampering. During Project development and throughout the aforementioned record retention periods, all records shall be subject to inspection and audit by the Department, HUD, or its representative.

#### 5.16 Project Closeout

The closeout of a project is a process through which HCD determines that all applicable administrative and programmatic requirements of the specific funding award were completed for the approved Project. In general, a Project is ready for closeout when the following conditions are met:

- All eligible activities were completed and met a national objective, as demonstrated by a construction completion and project occupancy by qualified tenants.
- All funds were expended in full, including corresponding adjustments awards and budgets, and the project did not result in any Duplication of Benefits.
- Any special conditions of the project, including required environmental mitigations, were met and documented.
- All audit and monitoring issues affecting the project were resolved.

The DR-MHP close out process results in disbursement of the 10% retainer, acceptance of all final project reporting submissions, and complete project records for the Program.

The Department shall require, as part of the Standard Agreement, the Project Sponsor shall submit all the records and reports as required to demonstrate compliance with the Program Legal Documents, as specified in section 5.3 of this documents, and these Policies and Procedures, as amended.

### 5.17 HUD Agreement Closeout

The closeout of HCD's CDBG-DR agreement with HUD is a process through which HCD and HUD determine and agree that all applicable administrative and program requirements of the grant were completed. In general, the CDBG-DR grant is ready for closeout when the following conditions are met:

- All eligible activities were completed and met a national objective.
- All grant funds were expended in full or all remaining funds are planned to be returned to HUD.
- All reporting requirements were completed and submitted (except for the final report that is submitted during the closeout process, if applicable).
- Any special conditions of the grant were met.
- All audit and monitoring issues affecting the grant were resolved.