

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

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DATE: March 30, 2022

TO: Interested Parties

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SUBJECT: Negative Points Policy

ADMINISTRATIVE NOTICE: Notice Number 2022-01

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

This advisory notice sets forth the California Department of Housing and Community Development's (HCD/Department) Negative Points Policy, which is incorporated as referenced to all state and federal funding programs guidelines, regulations, or NOFAs - for both loans and grants - administered by HCD's Divisions of State Financial Assistance, Federal Financial Assistance¹ and Housing Policy Development. This includes all programs in existence with active monitoring and reporting requirements at the time of the original adoption of this policy as well as any new programs to be administered by the Department.

Negative points will be calculated based on the criteria outlined below and will be applicable to all Notices of Funding Availability issued by the Department on or after March 31, 2022.

This document has no independent regulatory effect unless until and where incorporated by reference to guidelines, regulations, or NOFA's as applicable. The following negative point provisions rely on the regulatory authority of the underlying documents that incorporate this document by reference. Thus the legal basis for assessment of negative points may vary from program to program; but in general all assessments below are linked to one or more of the following, and reflect a deduction of points based on said category: readiness, feasibility, capacity, and experience. Thus past failures or deficiencies will result in deductions of points to the overall application based on the Department's ability to score the foregoing categories.

¹ Applications submitted for Department-administered federal programs operating under regulations, guidelines or NOFAs may be exempted from this Policy where alternative evaluation of financial or developer capacity considers past performance (e.g. HOME, HOME-ARP, NHTF).

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Please note, for HCD-administered funding where the awardee independently contracts with an entity to develop or implement a project or activity on its behalf, the project or activity itself may not be subject to the assessment of negative points based on performance of the contracted entity.

Potential applicants are encouraged to contact the Department in advance of submitting an application for funding to identify any outstanding reports, payments due or other deficiencies which may result in assessment of negative points if not cured prior to the application due date by sending an email to ComplianceVerification@hcd.ca.gov. The Department will endeavor to give notice of deficiencies that incur negative points when the Department becomes aware of such deficiency in the normal course of its business. This notice will be through compliance letters, monitoring reports, responses to audit and budget submittals, and other communications. However, whether or not such notice is received, the applicant is still responsible for curing the deficiency, and must do so prior to an application for funding to avoid the assessment of negative points.

BACKGROUND

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

Through this negative points policy, the Department ensures that the limited critical funding resources available are directed to entities that demonstrate the ongoing capacity to successfully operate and manage affordable housing developments or implement programmatic activities and successfully deliver of the Department's mission to promote safe and affordable housing.

Negative points will be assessed upon receipt of an application for HCD funding based on the criteria below and applicants will have an opportunity to appeal the assessment of any negative points prior to the finalization of rating and ranking and/or award recommendations. In addition to the negative points assessed based on the criteria below, the Department reserves the right, in its sole discretion, to revoke an entity's eligible sponsor or applicant status at any time based on documented serious issues with the operation, maintenance or implementation of project or program funds. Negative Points are not considered to be assessed and to rest with a developer, instead they are assessed, as part of each rating and ranking cycle performed by the Department. A deficiency is what causes the negative points, and the deficiency itself is what is associated with the Developer, but the points themselves remain a per cycle assessment depending upon the status of said deficiency.

Originally published March 30, 2022 and as amended on:

- *November 9, 2022*
- *April 3, 2023*

California Department of Housing and Community Development

Negative Points Policy

Section 101. Definitions

In addition to the definitions found in the Uniform Multifamily Regulations (UMRs) (25 CCR 8301) and the Multifamily Housing Program (MHP) Guidelines (dated March 30, 2022, or as further amended), the following definitions shall apply.

Please note: capitalized terms used throughout this policy that are not defined below shall have the same meaning in the UMRs and/or MHP Guidelines.

- (a) “CRP” means the Department’s Compliance Resolution Program.
- (b) “Curable” events means points to be assessed may be corrected prior to the application due date as stated in the applicable Notice of Funding Availability (NOFA).
- (c) “Non-Curable” events are events which will result in the assessment of negative points, even if resolved, for a minimum of two years from the date the Responsible Party was initially notified of the infraction or otherwise determined by the Department and communicated in writing through an agreement with the Responsible Party.
- (d) “Program Documents” means the Standard Agreement, Promissory Note and/or Regulatory Agreement and any other documentation meant to support the monitoring and compliance of project or program activity.
- (e) “Responsible Party” means the grantee(s), Sponsor(s) refer to UMR Section 8301(s), applicant(s), and borrower(s) of a project subject to the sanctions in this policy. If an entity is a Special Purpose Entity, refer to UMR Section 8313.2(a).
- (f) “Restructuring” means one or more of the following: Extension of the Department’s loan term (or terms, if there are multiple Department loans), subordination of the Department’s loan or loans to a new senior loan or loans, and/or Low-Income Housing Tax Credit investment refinance.
- (g) “UMR” means the Uniform Multifamily Regulations (Cal. Code Regs., tit. 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended

Section 102. Negative Point Assessments

Assessments shall be determined solely by the Department and be based on Department-assisted multifamily projects, homeownership projects or program activities under the control of the Responsible Party which have had a detrimental effect on the project or program activity or the Department’s ability to monitor a project or program activity.

Assessments to the Responsible Party will be for the prior two-year period from the date of the applicable NOFA, except where noted below.

- (a) Curable Assessments: Prior to the application due date, a Responsible Party may submit necessary documentation or take corrective action to cure items detailed below. Any item not cured as of the applicable application due date will result in the assessment of negative points to said developer or affiliate when it proffers a project at the next funding cycle.



- (1) Required Reports – failure to submit regularly required reports to the Department (points are assessed for each occurrence):
 - (A) Three points for financial statements (audited or unaudited, as required)
 - (B) Three points for the Schedule of Rental Income
 - (C) Two points for Operating Budget, Supportive Housing, Special Needs reports
 - (D) Two points for annual, bi-annual, or quarterly reports, including reports required pursuant to AB 362 and/or other required milestone reports for grant programs

Reports must be complete, accurate and acceptable based solely on the Department’s determination. Any reports submitted and not deemed acceptable will result in negative points until an acceptable report is received.
- (2) Required Payments - three points for each outstanding payment owed to the Department that is more than 90 days past due. Payments remaining unsettled after two years will continue to result in the assessment of 3 negative points for each payment owed until such payments are received.
- (3) Assisted/Restricted Units: two points for each occurrence for failure to restrict the number of assisted units as required by the Program Documents
- (4) Special Needs or Supportive Housing: two points for failure to restrict unit occupancy to Special Needs, Supportive Housing, or other target population as required by the Program Documents
- (5) Supportive Services: five points for failure to provide required supportive services to Special Needs, Supportive Housing, or other tenants of the Project as required by the Program Documents
- (6) Project Maintenance: five points for each occurrence for failure to adequately maintain a Project or cure findings within the timeframe specified within the Department’s Site Monitoring Report and/or other Department correspondence
- (7) Rents: five points for each occurrence for implementing Rent increases without prior Department approval (where approval is required) or charging Rents greater than Rents allowable under the Department Program
- (8) Reserves: failure to maintain adequate reserve funds (points are assessed for each occurrence as detailed below):
 - (A) Five points for each occurrence for failure to deposit reserve funds as required by the Department without Department approval; curable if funds deposited.
 - (B) Five points for each occurrence for failure to use of Department-controlled reserve funds without prior Department approval and/or in a manner contrary to Program requirements; curable if funds redeposited

- (b) Non-Curable Assessments: Five points will be assessed for each occurrence or event in the following categories with a maximum assessment of 10 points per category and a maximum assessment of 50 points per Responsible Party per application.



- (1) Failure to submit required organizational documents, resolutions or other documents necessary to execute a standard agreement within the noted timeframes of the applicable award letter, as may be amended by the Department.
- (2) Failure to meet performance deadlines for encumbrance, liquidation and/or expenditure of funds pursuant to the applicable Standard Agreement.
- (3) Failure to meet performance requirements for construction commencement, construction completion, and occupancy as set forth in the applicable Standard Agreement.
 - (A) Not applicable to Affordable Housing and Sustainable Communities Program funded projects that have an extension approved by the Strategic Growth Council Executive Director prior to the milestone dates indicated in the Standard Agreement).
- (4) Failure to comply with applicable provisions of Welfare and Institutions Code Sections 8255 through 8257 relating to Housing First policies.
- (5) Failure to meet Disabled Veteran Business Enterprise requirements under the Veterans Housing and Homelessness Prevention Program.
- (6) Failure to comply with the requirements set forth in Government Code Section 65863.10 relating to preservation notices.
- (7) Disencumbrance and/or abatement of funds after award has been made and accepted by the applicant.
 - (A) Not applicable to partially funded Multifamily Super NOFA projects that fail to secure necessary funds within the timeframe required by/under the Department's Disencumbrance Policy, the Applicant/Sponsor.
- (8) Removal (or withdrawal while under the threat of removal) of a general partner as a consequence of failing to comply with contractual obligations, including the limited partnership agreement.
- (9) If, during the Department's permanent loan closing process, either of the following applies:
 - (A) The ratio of the Project's total eligible basis to its total adjusted threshold basis limit, calculated based on actual development costs following completion of construction and in accordance with UMR Section 8311, exceeds 170 percent or the amount stated in the applicable program guidelines/NOFA. The Assessment shall be 20 points.
 - (B) Failure to adhere to Program occupancy restrictions, including income limits, Rent limits, minimum or maximum number of persons in the household, or occupancy by target populations. In cases where reducing or eliminating occupancy restrictions to reflect actual occupancy status at the time of loan



closing would have resulted in a reduction of points awarded at time of application, the Assessment shall be a minimum of five points or an amount equal to what the point score reduction is, whichever is greater. In cases where reducing or eliminating the occupancy restrictions to reflect actual occupancy status at the time of loan closing would not have resulted in a reduction of points awarded at the time of application, the Assessment may be five points.

- (10) Misrepresentation of material facts related to the Responsible Party's compliance with the Department's Program Documents;
- (11) Other significant violations of the requirements of Department programs as determined solely by the Department and for which the Responsible Party has been noticed of the violation in advance of the assessment of points. Assessment of points shall be at the Department's sole discretion and based on the severity and length of time of the violation but shall be no greater than 10 points per infraction.

Section 103. Defaults and Workouts

The following point assessments apply only to those Department assisted Projects assessed points under Section 102 hereof where the Project is subsequently referred to CRP or Legal Affairs for ongoing defaults or compliance issues. Points assessed under this Section 103 shall not be a duplication of points assessed under other sections hereof but shall be additional sanctions for continuing or worsening noncompliance and/or defaults.

Negative points under Section 103 shall be assessed at each rating and rating cycle, for minimum period of five years from the date the Responsible Party was notified of the event or until the event has been resolved to the sole satisfaction of the Department.

- (a) Five points may be assessed for each occurrence or event in the following categories:
 - (1) CRP issued Preliminary Notice of Default;
 - (2) Failure to correct noncompliance issues within the timeframe specified in the Department's Preliminary Notice of Default;
 - (3) Failure to comply with the terms of a forbearance agreement;
- (b) Ten points may be assessed if for each occurrence where CRP (or any other lender) recorded Notice of Default in the official records of the county in which the Project is located.

Section 104. Restructurings

- (a) Five points may be assessed for each occurrence or event in the following categories, with a maximum assessment of 10 points per category and a maximum assessment of 50 points per Responsible Party per application:
 - (1) Failure to cooperate with the Department to bring the Restructuring to a close within one year of application, as evidenced by:
 - (A) Responsible Party's failure to respond to Department requests in a timely manner;



- (B) Responsible Party's failure to produce documentation required to complete the Department's application.
- (2) Misrepresentation of material facts related to the Responsible Party's application for a transaction.

Section 105. Program Funding Ineligibility

- (a) For applications to noncompetitive funding programs (i.e. programs with no rating and ranking criteria), Responsible Parties with 30 or more assessed points as of the first day of the application period shall be ineligible for an award.
- (b) Any Responsible Party of a Project that has been foreclosed by HCD or any lender shall be ineligible to apply for Department funding for a period of 10 years from the date of the foreclosure, except as described in subsection (c).
- (c) Any Responsible Party convicted of fraud, embezzlement, money laundering, or falsifying documents shall be barred from applying for Department funding.
- (d) Any Responsible Party that submits to the Department documents containing a misrepresentation of material fact, including documents submitted in connection with applications for funding or loan closings, Annual Reports, Schedules of Rental Income, or clearance of Monitoring Findings, shall be ineligible to apply for Department funding for a minimum of two years, or for a longer period up to 10 years, as determined by the Department.
- (e) Any Responsible Party that submits to the Department falsified or forged documents shall be barred from applying for Department funding.

Section 106. Notification and Appeals

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

