

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

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November 25, 2024

MEMORANDUM FOR: Interested Parties

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

A handwritten signature in blue ink that reads "J Seeger".

ADMINISTRATIVE NOTICE: Notice Number: DSFA 24-06

SUBJECT: Veterans Housing and Homelessness Prevention Program (VHHP) Secondary Tenants Policy

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

This Administrative Notice (Notice) sets forth and establishes the California Department of Housing and Community Development's (HCD or Department) Secondary Tenants Policy for the Veterans Housing and Homelessness Prevention Program (VHHP Secondary Tenants Policy or Policy). This Policy implements statutory changes made under AB 1386 (Chapter 760, Statutes 2023) as amended by AB 535 (Chapter 918, Statutes 2024) applicable to Military and Veterans Code sections 987.003 and 987.005 and applies to all HCD-awarded VHHP rental housing projects.

The Secondary Tenants Policy establishes a petition process to temporarily redesignate a portion of a VHHP-assisted project's 30% Area Median Income (AMI) Supportive Housing units to 60% AMI Supportive Housing units, as further detailed below.

Background

Assembly Bill 1386 (Chapter 760, Statutes 2023), codified as Military and Veterans Code sections 987.003 and 987.005, provided for a petition process to temporarily redesignate extremely low-income Supportive Housing units (Qualified Units) restricted for veterans experiencing homelessness to Supportive Housing units restricted to veterans experiencing homelessness with incomes up to 60% AMI. The bill was enacted to resolve issues with matching unhoused veterans with vacant Supportive Housing units restricted to veterans, while retaining the VHHP program's original programmatic intent of serving the highest need veterans experiencing homelessness. Assembly Bill 535 (Chapter 918, Statutes 2024) clarifies temporary income requirements flexibility for Qualified Units and excludes service-connected disability benefits from the determination of income eligibility. In accordance with the requirements of these two bills the Department has established this VHHP Secondary Tenants Policy to house more veterans.

The Veterans Housing and Homeless Prevention Act of 2014 (“the Act”) requires the California Housing Finance Agency, the California Department of Housing and Community Development, and the Department of Veterans Affairs (referred to collectively as “the departments”) to establish programs that focus on veterans at risk of homelessness or experiencing temporary or chronic homelessness, as specified. The Act requires the departments to ensure at least 50% percent of funds awarded for capital development are used to provide housing to veterans with adjusted gross incomes at or below 30% AMI and that at least 60% of those units are Supportive Housing units, as defined.

The Secondary Tenants Policy establishes the petition process that VHHP project sponsors may use to request authorization from the Department to place homeless veterans with incomes above 30% AMI in Qualified Units, defined as Supportive Housing units restricted to 30% AMI households, and charge commensurate rent. These tenants are named Secondary Tenants under the Veterans Housing and Homelessness Prevention program. Secondary Tenants are defined in statute as veterans experiencing homelessness with an income of up to 60% AMI. Rents for any redesignated units are determined by income limits that the correspond to the Secondary Tenants’ household income.

Project sponsors are required to take specified actions to demonstrate a good faith effort to place Qualified Tenants in Qualified Units and file a petition with the Department before they can place Secondary Tenants in units otherwise designated for 30% AMI veterans upon approval of the filed petition. Good faith efforts include: 1) adequate marketing of vacant units spanning at least 90 days prior to the commencement of initial lease-up or at least 60 days after a unit turns over, 2) partnering with local homeless and veterans service providers to identify Qualified Tenants, 3) coordination with the local Continuum of Care to receive prioritized Qualified Tenant referrals, 4) coordination with the U.S. Department of Veterans Affairs to identify Qualified Tenants, and 5) documented contacts with Qualified Tenants, along with their case manager(s), who were referred to the project with vacant Qualified Units and choose not to lease the unit. Project sponsors should provide documentation that substantiates the timing and frequency of such good faith efforts, including the date that the Qualified Entity was notified of the vacancy, whenever such documentation exists and provide a descriptive timeline in the absence of documents to evidence activities such as phone calls and meetings. Documentation of these good faith efforts, along with information about applicants that were not matched with a unit, is required as part of the Secondary Tenant petition to the Department. Petition requirements may evolve over time and new or updated documentation may be requested to capture additional information and communicate best practices to better serve veterans.

The Department may condition its approval on expanded coordination between sponsors and community partners serving veterans, or other factors such as improved coordination with continuum of care or other sources of referrals. After the Secondary Tenant petition approval expires, the project sponsor is required to redesignate the next vacant unit as a Supportive Housing unit available to veterans with incomes at or below 30% AMI with the goal of returning the project into compliance with the unit mix required by the project’s regulatory agreement.

Secondary Tenants Policy

Petition Submittal and Approval Process: Project sponsors may petition the Department to request the temporary redesignation of Qualified Units (30% AMI Supportive Housing VHHP units) to house Secondary Tenants using the Department’s petition form and instructions.

Project sponsors shall submit a completed VHHP Secondary Tenants petition workbook along with all required supplemental documentation for the Department review and approval. The required petition

information, documentation, and submission specifications are detailed in the VHHP Secondary Tenants Petition workbook and is posted on HCD's website. HCD's Asset Management and Compliance (AMC) staff will notify the sponsor if the petition package is complete and has been accepted within 7 business days. The Department may request additional information as needed and, in consultation with CalVet, will make a determination within 30 days of receipt of a complete petition request. If no determination is issued by the Department within 30 days of receipt, the petition will be deemed approved.

Petitions for a VHHP-assisted project may be submitted to the Department after one or more Qualified Units has been vacant for 30 days or longer. The Department, however, will not approve the redesignation of VHHP units at a project until one or more VHHP units has been vacant for 60 days or longer. Further, each Qualified Unit must be vacant for a minimum of 60 days before it is leased to a Secondary Tenant. Good faith efforts to match VHHP eligible Qualified Tenants must be made during the first 60 days of vacancy for each unit before leasing to a VHHP eligible Secondary Tenant. For new construction the vacancy period will be measured from the date the Certificate of Occupancy or Temporary Certificate of Occupancy is issued and for rehabilitation projects the vacancy period will be measured from the date the Notice of Completion is issued. Vacancy for previously occupied VHHP units during regular project operations will be measured from the date the sponsor or their operator takes possession of the unit. The Department may include time from abandonment noticing timeframes and unlawful detainers at its discretion.

Petitions will be approved at the project level, with HCD approving a specific number of Qualified Units that may be occupied by Secondary Tenant households within a project. Projects may lease Qualified Units to Secondary Tenants until they hit the maximum number of Secondary Tenants approved by HCD or until the redesignation approval expires. **In no instance shall a project have less than 30% of its VHHP units leased to 30% AMI households.***

** Veterans who are experiencing homelessness that are eligible to occupy VHHP 30% AMI units after excluding VA service-connected disability compensation are recognized as Qualified Tenants. They are not treated as Secondary Tenants.*

Sample of maximum redesignation with 30% of VHHP units remaining at 30% AMI							
VHHP Unit Mix							
Original Unit Mix (VHHP Mix as shown in Regulatory Agreement)				Redesignated Unit Mix (After Secondary Tenants Policy Approval & leasing)			
AMI	Studio	1	Total	AMI	Studio	1	Total
30%	13	57	70	30%	8	28	36
50%		50	50	50%	5	65	70
60%			0	60%		14	14
Total	13	107	120	Total	13	107	120
Minimum of 30% of the total number of VHHP units must remain at 30% AMI. 120 total VHHP units multiplied by 30% equals 36: $120 * 30\% = 36$ At least 36 VHHP units at this project must remain at 30% AMI under this policy							

Petition Approval Requirements and Term: The term of HCD's approval for each project will be 12 months. All Secondary Tenants must take legal possession of the unit while HCD's approval is in effect. Secondary Tenants shall be recognized as eligible tenants by the Department and fully compliant with VHHP regulatory requirements for the duration of their tenancy. Secondary Tenants shall not be involuntarily displaced for the sole reason of returning the unit mix into compliance.

Once an approval expires, no new Secondary Tenants may move into the project and projects sponsors are required to make the next available units available to Qualified Tenants until the in-place unit mix at the project matches the VHHP regulatory agreement. After the Secondary Tenant approval has expired, project sponsors may submit a subsequent Secondary Tenants petition if physical vacancy of Qualified Units is greater than or equal to 10% at the project at any point during an operating year or due to special circumstances detailed in a letter to the Department.

Initial rent charges for Secondary Tenants shall be commensurate with the new Secondary Tenant's household income, rounded up to the nearest 10% AMI level from the occupant's adjusted gross income. The Secondary Tenants household's initial gross maximum rent at move-in shall be the equivalent MTSP Rent Limit for their rounded-up AMI. The initial "move-in" gross rent for the Secondary Tenant must be set at gross maximum rent unless an alternate amount is approved by AMC. This move-in rent shall be used as the "rent floor" for the duration of the household's tenancy at the project. Secondary Tenants' rents are not required to be adjusted downward in the event Secondary Tenants' income decreases. Rents for Secondary Tenants may increase up to the 60% AMI rent limit with HCD approval through annual rent increases. A project must identify Secondary Tenants in its annual reporting on the Department's Schedule of Rental Income (SRI) or on a supplemental schedule as may be required by the Department. The Department may add additional reporting requirements for Secondary Tenants to evaluate the results of this policy. Any additional reporting requirements will be communicated in writing to each sponsor with at least 90 days' notice.

The Department will review applications for completeness and advise the sponsor/petitioner if information is incomplete or clarifying information is needed. Incomplete petitions may be updated or re-submitted after receiving direction from the Department. Complete petitions that have been deemed "not approved" by the Department based on merits who wish to appeal the decision must do so in writing within two weeks of the initial determination. Projects whose petitions, and any related appeals, are rejected based on merits may re-petition the Department after 12 months.

HUD-VASH Special Rule

On August 13, 2024, HUD published the "Section 8 Housing Choice Vouchers: Revised Implementation of the HUD Veterans Affairs Supporting Housing Program (VASH)" ("special rule") that provides a new requirement to exclude veterans' service-connected disability benefits from household income calculations for the purpose of determining VASH applicants' income eligibility for both project-based and tenant-based vouchers. VHHP income determinations for VASH applicants must exclude veterans' service-connected disability income and therefore are excluded from the VHHP Secondary Tenant alternative requirements and process if they are income eligible after the disability compensation exclusion. Eligible HUD-VASH program participants are not considered Secondary Tenants and are not counted against the cap on the number of Qualified Units that can be leased to Secondary Tenants under this policy.

Reference: Section 8 Housing Choice Vouchers: Revised Implementation of the HUD Veterans Affairs Supporting Housing Program Development, 89 Fed. Reg. 65769 (Aug. 13, 2024) (amending 24 CFR Parts 982 and 983)

AB 535 (Chapter 918, Statutes 2024)

On September 29, 2024, Governor Newsom signed AB 535 that simplified the Secondary Tenant definition and excluded all military service-connected disability benefits from VHHP income eligibility determinations. Under State law all VHHP income determinations for eligibility must exclude veterans service-connected disability income from the calculation. AB 535 aligns with the HUD-VASH special

rule on income eligibility. Veterans, including HUD-VASH recipients, who are income eligible under VHHP program requirements after excluding service-connected disability income are Qualified Tenants. Qualified Tenants conform with the requirements of VHHP regulatory agreements, are not counted as Secondary Tenants, and do not count against the cap on the number of Qualified Units that can be leased to Secondary Tenants under this policy.

Reference: Military and Veterans Code section 987.005 (h).

California Tax Credit Allocation Committee (TCAC)

The California Tax Credit Allocation Committee provides guidance on Secondary Tenants requirements for tax credit programs at <https://www.treasurer.ca.gov/ctcac/compliance.asp>.

Please reach out to VHHPSecondaryTenants@hcd.ca.gov should you have any questions or need technical assistance with completing the petition forms.