

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****Division of Financial Assistance**


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April 30, 2020

**MEMORANDUM FOR: ALL POTENTIAL APPLICANTS****FROM:**  
Jennifer Seeger, Acting Deputy Director  
Division of Financial Assistance**SUBJECT:****Transit-Oriented Development Housing Program  
Notice of Funding Availability**

The California Department of Housing and Community Development (Department) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately \$141 million in funds for the Transit-Oriented Development (TOD) Housing Program. This funding provides low-interest permanent Loans to eligible Sponsors for Rental Housing Developments. It also provides Grants to Localities and public transit agencies for Infrastructure Projects necessary for the development of specified Housing Developments, or to facilitate connections between these developments and a Transit Station. This Notice of Funding Availability makes funding available to Sponsors, Localities, and transit agencies for the purpose of increasing public ridership by funding higher density developments within one-quarter mile of Transit Stations and infrastructure improvements necessary for the development of specified housing developments.

Application workbooks will be posted to the TOD web page May 14, 2020. Application materials must be submitted electronically via the Financial Assistance Application Submittal Tool (FAAST).

**Electronic FAAST Submission** - Requirements for uploading the Supplemental Application, Universal Application, and required supporting documentation, including naming conventions, are described in the Supplemental Application instructions page. Applicants must upload all application materials to the FAAST system no later than **5:00 p.m. Pacific Standard Time on July 30, 2020.**

To receive information on workshops and other updates, please subscribe to the TOD program listserv. If you have any further questions, please contact [TOD@hcd.ca.gov](mailto:TOD@hcd.ca.gov).

**Transit-Oriented Development  
Housing Program**

**Notice of Funding Availability  
Round 4**



**Gavin Newsom, Governor  
State of California**

**Lourdes M. Castro Ramírez, Secretary  
Business, Consumer Services and Housing Agency**

**Douglas R. McCauley, Acting Director  
Department of Housing and Community Development**

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**Transit-Oriented Development Housing Program  
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April 30, 2020

## Table of Contents

|   |           |
|---|-----------|
| <b>I. Overview</b> .....  | <b>1</b>  |
| A. Notice of Funding Availability .....                                   | 1         |
| B. Timeline .....   | 1         |
| C. What is new in this NOFA .....   | 1         |
| D. Authorizing Legislation .....  | 2         |
| <b>II. Program requirements</b> .....                                     | <b>2</b>  |
| A. Eligible applicants .....  | 2         |
| B. Eligible projects .....  | 2         |
| C. Eligible costs .....   | 3         |
| D. Funding amounts and terms.....   | 3         |
| E. Program threshold requirements.....                                    | 4         |
| F. Application selection criteria (rating and ranking).....               | 4         |
| G. Tiebreaker.....  | 5         |
| <b>III. Application submission, workshops, reviews, and appeals</b> ..... | <b>5</b>  |
| A. Application submission process .....                                   | 6         |
| B. Application workshops .....  | 6         |
| C. Application review process.....  | 6         |
| D. Appeals .....  | 7         |
| E. Disclosure of application .....  | 8         |
| <b>IV. Award announcements and contracts</b> .....                        | <b>8</b>  |
| A. Award announcements .....  | 8         |
| B. Contracts.....   | 8         |
| C. Article XXXIV.....   | 8         |
| D. Relocation .....   | 9         |
| E. State Prevailing Wages.....  | 10        |
| <b>V. Other terms and conditions</b> .....                                | <b>10</b> |
| A. Right to modify or suspend .....                                       | 10        |
| B. Conflicts .....  | 10        |

## I. Overview

### A. Notice of Funding Availability

The California Department of Housing and Community Development (Department) announces the availability of approximately \$141 million for the Transit-Oriented Development Housing Program, funded by the Veterans and Affordable Housing Bond Act of 2018. The amount stated in this NOFA is contingent upon enactment of the final budget appropriating this funding level.

These funds will be used to provide financial assistance for Rental Housing Developments and Infrastructure Projects in support of higher-density affordable and mixed-income housing and mixed-use infill development Projects. The primary objective is to increase the overall supply of housing, increase the supply of affordable housing, increase public transit ridership, and minimize automobile trips.

Under the Transit-Oriented Development (TOD) Housing Program, low-interest permanent Loans are available as gap financing for Rental Housing Developments. In addition, Grants are available for infrastructure improvements necessary for the development of specified Housing Developments, or to facilitate connections between these developments and the Transit Station.

### B. Timeline

|                      |                |
|----------------------|----------------|
| NOFA Release         | April 30, 2020 |
| Application Due Date | July 30, 2020  |
| Award Announcements  | October 2020   |

### C. What is new in this NOFA

Applications submitted under this NOFA are subject to the Round 4 TOD program Guidelines (Guidelines).

Significant Guideline-related changes include:

1. The maximum individual award is increased to \$15 million.
  - a. The maximum Loan amount is increased to \$10 million.
  - b. The maximum Grant amount is increased to \$5 million.
2. Numerous threshold and scoring criteria have been simplified or updated to better align with other programs administered by the Department.
3. Policy changes were made to highlight headway and transit frequency rather than focus on mode of transit.

4. Direct funding for homeownership developments was removed, but the TOD program may still provide grant funding for Infrastructure Projects related to homeownership developments.

#### **D. Authorizing Legislation**

This NOFA is governed by the TOD program Round 4 Guidelines available at: <https://www.hcd.ca.gov/grants-funding/active-funding/tod.shtml#guidelines>.

Applications must be completed pursuant to the requirements in the Guidelines. This NOFA is also subject to requirements of the TOD program authorized by Part 13 (commencing with Section 53560) of Division 31 of the California Health and Safety Code (HSC).

In addition, the Uniform Multifamily Regulations (UMRs) (California Code of Regulations, Title 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference. In the event of a conflict between the UMRs and TOD program Guidelines, the provisions of the Guidelines are controlling.

## **II. Program requirements**

The following is provided as a summary and is not to be considered a complete representation of the entirety of the eligibility, threshold, or other requirements or terms and conditions of the TOD program. Please note that capitalized words may be defined terms found in the program Guidelines. Please refer to the Guidelines for complete information.

### **A. Eligible applicants**

An Applicant must be eligible pursuant to the Guidelines, Section 104, Eligible Applicant. Applicants may include Sponsors (as defined in the Guidelines, Section 102), Localities (as defined in the Guidelines, Section 102), and transit agencies that meet the application threshold requirements under the Guidelines Section 109.

### **B. Eligible projects**

To be eligible for funding under the program, a Project must consist of either, or both, a Housing Development or an Infrastructure Project meeting the following criteria (as defined in the Guidelines, Section 103, Eligible Projects):

1. A Housing Development must:
  - a. Consist of new construction or Substantial Rehabilitation of residential units, or the conversion of one or more nonresidential structures to residential units, to provide no fewer than 20 units.

- b. Be located:
    - Within one-quarter mile from a Qualifying Transit Station; and
    - Within one-half mile walking distance from a Qualifying Transit Station.
  - c. Include at least 15 percent of the total residential units as affordable units.
  - d. Have a minimum Net Density according to the TOD program Guidelines, Section 103(a)(4), Eligible Projects.
2. A Housing Development may:
- a. Include residential units that are rented; and
  - b. Include nonresidential uses that are compatible.
3. An Infrastructure Project must:
- a. Include capital improvements as directed by the TOD program Guidelines, Section 103(c).
4. An Infrastructure Project may:
- a. Benefit residential development not included in the Housing Development, but must provide substantial direct benefit to at least one Housing Development identified in the application.
5. An Infrastructure Project may not:
- a. Include schools, transit-related vehicles, and replacement parking not required by a public agency as a condition of developing a Project.

### **C. Eligible costs**

The TOD program funds eligible Rental Housing Developments and Infrastructure Projects. For a detailed list of all eligible costs, please refer to the Guidelines, Section 105, Eligible Costs.

### **D. Funding amounts and terms**

1. The TOD program funding award maximum means the following:
- a. The maximum Program Rental Housing Development Loan (Loan) amount awarded for a single Housing Development or to a single housing Developer Applicant, including any affiliates of such Applicant, will be \$10 million. The base loan amount will be \$150,000 per Restricted Unit.

- b. The maximum Program Infrastructure Project Grant (Grant) awarded to a Locality or transit agency Applicant will be \$5 million.
  - c. The total maximum award amount for a single Project is \$15 million.
2. TOD program Loan assistance terms for Rental Housing Developments are defined in the Guidelines, Section 106(a) and include the following:
- a. Program funds will be provided as a Loan for permanent financing by the Department to the owner of the Housing Development, with the same financing terms and conditions as set forth in Multifamily Housing Program (MHP) Guidelines Section 7308.
  - b. The maximum Loan amount shall be calculated pursuant to Section 7307 of the MHP Guidelines.
  - c. The use of multiple Department funding sources on the same assisted units is prohibited.
  - d. Rental Housing Developments supported by the Infrastructure Project shall be subject to a recorded Covenant ensuring affordability for at least 55 years.
  - e. Rent limits shall be established pursuant to Section 106(a)(5) of the Guidelines.
3. TOD program Grant assistance terms for Infrastructure Projects are defined in the Guidelines, Section 106(b) and include the following:
- a. The total Grant amount shall be limited to \$35,000 per residential unit in the proposed Housing Development and \$50,000 per Restricted Unit.
  - b. Disbursement of Program funds shall be established pursuant to Section 106(b) of the Guidelines.
  - c. Additional conditions shall be established pursuant to Section 106(b) of the Guidelines.

#### **E. Program threshold requirements**

In addition to meeting the requirements of the Guidelines as described above, Applicants and Projects must meet the Program threshold requirements found in Section 109 of the Guidelines.

#### **F. Application selection criteria (rating and ranking)**

The application process will be based on the criteria set forth in Section 108 of the Guidelines and applications will be scored based on the criteria set forth in Section 110 of the Guidelines.

To be considered for funding, Project applications must receive a minimum score of 150. The maximum number of points an application can receive is 300.

The highest scoring applications that meet all threshold requirements will be selected for funding in this NOFA. Applications will be funded in descending order. The Department may make adjustments to this procedure to meet the following geographic distribution objectives:

1. Awarding not less than 45 percent of funds to Southern California Projects (those located in Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego or Imperial counties); and
2. Awarding not less than 30 percent of funds to Northern California Projects (those not located in the counties specified in the previous subsection).

### **G. Tiebreaker**

In the event two or more applications have the same rating and ranking score, the following tiebreaking points will be awarded, in the following order of priority, until there is no longer a tie:

1. The lowest weighted average affordability of Restricted Units pursuant to MHP Guidelines Section 7320(b)(7); and
2. The total amount of Department assistance to the Project in comparison to the total costs of the Project. Applications with a lower amount of Department funding compared to the total Project cost shall prevail.

The Department administers the competitive application process pursuant to this NOFA and will make the Program award determinations.

### **III. Application submission, workshops, reviews, and appeals**

Applications must meet eligibility requirements for the Sponsor, Project, and eligible costs upon submission, except where alternate provisions are indicated in the Guidelines, or Program Application (See Program Requirements above for eligible Applicants, eligible Projects, and eligible costs). Modification of the application forms by the Applicant is prohibited. It is the Applicant's responsibility to ensure the application is clear, complete, and accurate. After the application deadline, Department staff may request clarifying information, provided such information does not affect the competitive rating of the application. No information, whether written or oral, will be solicited or accepted if this information would result in a competitive advantage to an application or a disadvantage to other Applicants. No Applicant may appeal the evaluation of another Applicant's application.



## A. Application submission process

Application materials must be submitted electronically via the Financial Assistance Application Submittal Tool (FAAST) system.

**Electronic FAAST submission** - Requirements for uploading the Supplemental Application, Universal Application, and required supporting documentation, including naming conventions, are described in the Supplemental Application instructions page <https://www.hcd.ca.gov/grants-funding/active-funding/tod.shtml#funding>. Applicants must upload all application materials to the FAAST system no later than **5:00 p.m. Pacific Standard Time on Tuesday, July 30, 2020**.

Applications that do not meet the filing deadline requirements will not be eligible for funding. Applications must be on the Department's forms and cannot be altered or modified by the Applicant. Excel forms must be in Excel format, not a PDF document.

## B. Application workshops

The Department will conduct application webinars. Please visit <https://www.hcd.ca.gov/grants-funding/active-funding/tod.shtml#webinar> for the dates, locations, and registration.

## C. Application review process

### 1. Phase One – Threshold Review

Application completeness and satisfaction of threshold criteria described in the Guidelines Section 109 will be confirmed. The threshold review for financial feasibility in this phase is limited to verification of documentation completeness, not an evaluation of material facts. A thorough analysis of the Project's financial feasibility will be conducted in Phase Two. Phase One is a pass or fail stage, and Applicants will receive notification of their status upon completion of threshold reviews, with a five-day opportunity to appeal the review findings.

### 2. Phase Two – Rating and Ranking

Applications that pass threshold review will be rated and ranked through a competitive process based on the following point scoring criteria described in the Guidelines Section 110:

| <b>Section 110</b> | <b>SCORING CRITERIA</b>   | <b>POINTS</b> |
|--------------------|---|---------------|
| (a)                | Extent to which the Project will increase public transit ridership and minimize automobile trips            | 60            |
| (b)                | Location in an area designated for Infill or transit-oriented development and public and private investment | 30            |
| (c)                | Extent to which the Housing Development serves Eligible Households  | 30            |
| (d)                | Transit-supportive land use   | 20            |

| <b>Section 110</b> | <b>SCORING CRITERIA</b>   | <b>POINTS</b> |
|--------------------|---|---------------|
| (e)                | Extent to which the Project incorporates walkable corridor and bicycle features | 50            |
| (f)                | Parking alternatives and Micromobility  | 40            |
| (g)                | Readiness of the Housing Development  | 30            |
| (h)                | Adopted Economic Development Plan   | 10            |
| (i)                | Accessibility to Qualified Employment Areas                                     | 30            |
|                    | TOTAL   | 300           |

## **D. Appeals**

### 1. Basis of Appeals

- a. Upon receipt of the Department’s notice that an application has been determined to be incomplete, ineligible, fail threshold, or have a reduction of the initial point score, Applicants under this NOFA may appeal such decision(s) to the Department pursuant to this section.
- b. No Applicant shall have the right to appeal a decision of the Department relating to another Applicant’s eligibility, point score, award, denial of award, or any other matter related thereto.
- c. The appeal process provided herein applies solely to decisions of the Department made in this program NOFA and does not apply to decisions made with respect to previously issued NOFA or decisions pursuant to future program NOFAs.

### 2. Appeal Process and Deadlines

- a. To file an appeal, Applicants must submit to the Department, by the deadline set forth below, a written appeal which states all relevant facts, arguments, and evidence upon which the appeal is based. The Applicant must provide a detailed reference to the area or areas of the application that provide clarification and substantiation for the basis of the appeal. No new or additional information will be considered if this information would result in a competitive advantage to an Applicant. Once the written appeal is submitted to the Department, no further information or materials will be accepted or considered thereafter.
- b. Appeals must be submitted to the Department at [TOD@hcd.ca.gov](mailto:TOD@hcd.ca.gov) according to the deadline set forth in Department review letters.

- c. Appeals must be received by the Department no later than five business days from the date of the Department's threshold review or initial score letters.

### 3. Decision

Any request to amend the Department's decision shall be reviewed for compliance with the Guidelines and this NOFA. All decisions rendered shall be final, binding, and conclusive, and shall constitute the final action of the Department.

## **E. Disclosure of application**

Information provided in the application will become a public record available for review by the public, pursuant to the California Public Records Act (Chapter 1473, Statutes of 1968). As such, any materials provided will be disclosed to any person making a request under this Act. The Department cautions Applicants to use discretion in providing information not specifically requested, including, but not limited to, bank account numbers, personal phone numbers, and home addresses. By providing this information to the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted material upon request.

All application materials submitted through the FAAST portal will be publicly accessible following award announcements.

## **IV. Award announcements and contracts**

### **A. Award announcements**

Awards will be announced in October 2020, and posted on the TOD program website: <https://www.hcd.ca.gov/grants-funding/active-funding/tod.shtml>

### **B. Contracts**

Successful Applicants (awardees) will enter into one or more Standard Agreements with the Department. The Standard Agreement contains relevant terms and conditions for funding of the award.

### **C. Article XXXIV**

Eligible Projects shall comply with Article XXXIV, Section 1 of the California Constitution as clarified by the Public Housing Election Implementation Law (Health and Safety Code § 37000 – 37002). Article XXXIV documentation for Loans underwritten by the Department shall be subject to review and approval by the Department prior to the announcement of award recommendations.

Article XXXIV requires local voter approval before any state public body can develop, construct, or acquire a low-rent housing project in any manner. However, the Public Housing Election Implementation Law (HSC Section 37000 – 37002) provides

clarification as to when Article XXXIV is applicable. HSC Section 37001, for example, lists a number of project types that are not considered “low-rent housing projects.”

Applicants must submit documentation that shows the Project’s compliance with or exemption from Article XXXIV authority for the Project. A local government official with authority should prepare the allocation letter, and it should include the following:

1. The name and date of the proposition, and the number of units approved;
2. A copy of the referendum and a certified vote tally;
3. The number of units that remain in the Locality’s “bank” of Article XXXIV authority (i.e., the number of units that are still available for allocation); and
4. The number of units the locality will commit to this project, including the manager unit.

If a Project is statutorily exempt from Article XXXIV, the Department requires an Article XXXIV opinion letter which demonstrates that the Applicant has considered both the legal requirements of Article XXXIV and the relevant facts of the Project (e.g., all funding provided by public bodies, including state, county, or city sources, the number of low-income restricted units, the general content of any regulatory restrictions). Any conclusion that a Project is exempt from Article XXXIV must be supported by the facts and a specific legal theory for an exemption that itself is supported by the Constitution, statute, and/or case law.

#### **D. Relocation**

Both the Applicant and the Department must comply with applicable Relocation Law, which is detailed pursuant to Government Code Section 7260 et seq., the California Code of Regulations, Title 25, Section 6000 et seq., and if federal law is applicable (depending on financing), 49 CFR Part 24 of the Uniform Relocation Assistance Real Property Acquisition for Federal and Federally Assisted Programs (the “URA”) (collectively referred to herein forth as “Relocation” or “Relocation Law”).

Relocation Law provides important protections and assistance for displaced persons and entities affected by the acquisition, rehabilitation, or demolition of real property for government-funded projects. Relocation Law ensures that those displaced individuals and entities whose real property is acquired, or who move (even if temporarily), as a direct result of projects receiving government funds, are treated fairly and equitably and receive assistance in moving from the property they occupy. The Department seeks to ensure that displaced persons, which includes tenants, businesses and homeowners, do not suffer disproportionately as a result of programs designed for the benefit of the public as a whole.

At the NOFA application stage, it is too premature to conduct a detailed Relocation review. At this stage, the Department only needs to confirm that Relocation is properly budgeted. Due to the importance of satisfying Relocation law, the Applicant

is encouraged to employ the services of a Relocation consultant to procure a good faith estimate of the potential Relocation cost, which may (or may not) necessitate a Relocation plan. The Department has found that the services of a professional Relocation consultant may save an Awardee money and time in the loan process.

The importance of satisfying Relocation cannot be understated. Failure to follow the Relocation requirements will result in the Project not being funded by the Department. Applicants cannot circumvent Relocation Law to avoid Relocation payment assistance by simply not renewing leases, which is not permissible under Relocation Law. At the construction loan close stage, the Department will notify all lenders that failure to satisfy Relocation, particularly the improper displacement of individuals or entities, could jeopardize Department funding.

#### **E. State Prevailing Wages**

TOD program funds awarded under this NOFA are subject to state prevailing wage law, as set forth in Labor Code Section 1720 et seq., and require the payment of prevailing wages unless the Project meets one of the exceptions of Labor Code Section 1720 (c), as determined by the Department of Industrial Relations (DIR). Applicants are urged to seek professional advice as to how to comply with state prevailing wage law. The DIR can be contacted via its website at <https://www.dir.ca.gov/oprl/dprewagedetermination.htm>

#### **V. Other terms and conditions**

##### **A. Right to modify or suspend**

The Department reserves the right, at its sole discretion, to suspend, amend, or modify the provisions of this NOFA at any time, including without limitation, the amount of funds available hereunder. If such an action occurs, the Department will notify interested parties and will post the revisions to the Department's website. Subscriptions to the Department's email list are available at: [https://www.hcd.ca.gov/HCD\\_SSI/subscribe-form.html](https://www.hcd.ca.gov/HCD_SSI/subscribe-form.html).

##### **B. Conflicts**

In the event of any conflict between the terms of this NOFA and either applicable state or federal law or regulation, the terms of the applicable state or federal law or regulation shall control. Applicants are deemed to have fully read and understand all applicable state and federal laws, regulations, and guidelines pertaining to the TOD Program, and understand and agree that the Department shall not be responsible for any errors or omissions in the preparation of this NOFA.