NPLH Guideline Amendments

Explanation of Proposed Changes

September 2019

As used in this document, “Department” and “HCD” refer to the California Department of Housing and Community Development. The two terms are used interchangeably.

ARTICLE I. GENERAL PROGRAM REQUIREMENTS

Section 101. Definitions

Subsection (e) Assisted Unit

1. This definition was changed to include the term “NPLH Assisted Unit” because the two terms are used in the Guidelines interchangeably.
2. New Department requirements regarding the stacking of funding sources on the same Assisted Unit were moved from this definition to Section 200 (e) discussed below.

Subsection (f) At-Risk of Chronic Homelessness

This definition was amended to:

1. Eliminate the option of self-certification to qualify under this definition. This is consistent with the existing requirements in Section 206 which requires third-party documentation to qualify someone as Chronically Homeless, Homeless, or At-Risk of Chronic Homelessness;
2. Clarify that tenant selection protocols for persons At-Risk of Chronic Homelessness must be consistent with the requirements of the NPLH Guidelines, including but not limited to, Section 206 (Occupancy and Income Requirements), and Section 211 (Tenant Selection);
3. In subsection (4) of this definition, correct an errant reference to requirements in HUD’s definition of homelessness which are not required under the NPLH definition of At-Risk of Chronic Homelessness;
4. Also in subsection (4) of this definition, clarify existing requirements for Homelessness status at least once in the 12 months prior to entry into an institution.

Subsection (s) Enforceable Funding Commitment

This definition was added to clarify what must be documented to the satisfaction of the Department for an acceptable commitment letter for leverage and financing commitment points under Sections 205 (b) (c) and (d). These practices are currently utilized in other Department programs and cover basic information that should be available from most funders at the point that they are willing to commit funds to a particular Project.
Language was removed requiring rental and operating subsidy commitment letters to specify the number of NPLH units to be assisted. This information will instead be collected through the NPLH application form. This change was made in response to public comment.

**Subsection (w) Homeless**

Amendments to this section eliminate the phrase “including but not limited to” at the beginning of the definition in order to eliminate this inconsistency with the HUD definition of homeless.

**Subsection (vv) UMR**

Amendments to this section clarify that the UMRs may be amended from time to time.

The remainder of the changes in Section 101 re-letter definitions due to the addition of the new definition above, fix capitalization, or are other minor, non-substantive changes.

**Section 102. Funding and Formula Allocations**

**Subsection (c)**

These changes clarify what the actual dates are for meeting Noncompetitive Allocation deadlines previously adopted by the Department. When the NPLH Guidelines were first adopted, these specific dates were not known because they were tied to certain time periods following release of the first NOFA under the Program. These specific dates have also previously been provided in Department NOFAs and other communications, so they are not new, and reflect no change in Program requirements.

**Subsection (e)**

Permits Alternative Process Counties (APCs) to request a one-time advance in Rounds 2 or 3 in order to address documented unmet application demand. Funds advanced in a particular round will be deducted from the amount available to the APC in the following funding round(s). The amount advanced shall not exceed 100 percent of the amount provided to the APC in the funding round during which the request is made and shall depend on the availability of funds. This was done to enable APCs to address demand within their existing project pipelines without having to run separate or additional annual funding competitions for NPLH funds.

The additional changes to this section are minor, non-substantive corrections of capitalization and display of numbers.

**Section 103. Funding Rounds**

Subsection (a) - The second sentence of this paragraph was deleted because it speaks to an event that has already occurred, the release of the Department’s initial NOFA.
ARTICLE II. NONCOMPETITIVE AND COMPETITIVE PROGRAM ALLOCATIONS

Section 200. Uses and Terms of Noncompetitive and Competitive Allocations

Subsection (e) – Use of multiple sources of capital adds administrative complexity and costs for the Department and Project Sponsors. It can delay the development process, and potentially result in over-subsidization.

The restrictions on stacking or subsidy layering addressed by this language only apply to a combination of two or more of the listed sources on the same unit. Stacking and subsidy layering of a listed source with any other non-listed source continues to be permitted on the same unit.

This new language in subsection (e) also clarifies that the use of two of the listed Department funding sources in subsection (e) (1) on the same NPLH Assisted Unit is prohibited except if:

1) Only capitalized operating assistance or rental assistance is being provided by the other source of funds;

2) The other source of funds is not being used for rental housing. For example, funds used for transportation can be stacked with other Department funds used for rental housing.

NPLH funds provided to a Project by an APC under Article III of the Guidelines or a County designated by the Department to use their Noncompetitive Allocation for Shared Housing under Article IV of the Guidelines are also considered a Department funding source, and these funds are also subject to the stacking restriction.

The following is exempt from the stacking prohibition:

1) Any other Department program not listed in subsection (e) (1) of the rule;

2) Existing loans or grants under any Department program that are at least 14 years old and will be assumed or recast as part of an acquisition and rehabilitation project;

3) NPLH Noncompetitive Allocation and Competitive Allocation funds on the same unit or the same Project is still permitted if the Project application has been received by the Department or the APC prior to the applicable NOFA deadlines. In most cases, these two allocations will be awarded to the Project at the same time, so there will be little administrative delay caused by the stacking of these two sources. This exception does not apply to Shared Housing Projects, since Competitive Allocation funds cannot be used for Shared Housing.

These changes were made to clarify the Department’s current policies for all of its rental housing programs with regard to the stacking of multiple Department funding sources on the same units.
Subsections (h), (i) and (j)

These subsections impose loan closing deadlines on NPLH Projects, and allow extensions if needed to enable construction to proceed or to enable the Project to achieve 90 percent occupancy of the NPLH Units in a timely manner.

As proposed, all construction loan closings on NPLH-funded Projects shall occur no later than 36 months from the date of the Department’s award letter to the Project. The Department’s permanent loan closing shall occur no later than 72 months from the date of the Department’s award letter to the Project.

These changes were made in response to public comment. These loan closing timeframes may be necessary where multiple sources of financing are needed, and/or if full initial occupancy is delayed due to the multiple barriers to housing stability faced by the Target Population. It should not be difficult for most NPLH Projects to meet these timeframes; however, in the event that a Project encounters difficulty securing necessary financing or completing construction and rent-up activities, these deadlines can be extended by a total of up to 24 months.

Subsection (k) (1)

This subsection was modified to require that the annual monitoring fee be paid on the amount of the original loan for the term of the loan, or some other lesser amount approved by the Department as part of a Department debt-restructuring program, since the Department’s long-term monitoring responsibilities under the terms of the Project regulatory agreement will continue regardless of any subsequent pay-down or pay-off. These changes are consistent with current Department practice.

Subsections (l) (2) and (5)

These changes modify the methodology for calculating the per-Unit subsidy limits for the capital portion of the NPLH loan to be consistent with that to be used by the MHP program for its supportive housing units. This will enable NPLH to have more consistent per-unit subsidy limits with those of other Department Supportive Housing programs. NPLH will continue to offer funds to Projects utilizing 9 percent tax credits. Consistent with current Program practice, 9 percent tax credit Projects will have lower per-Unit subsidy limits than all other Projects since these Projects receive a larger share of tax credit equity.

By application of the formula, the adjusted limits will continue to vary by county, Area Median Income (AMI) level being targeted, and number of bedrooms per-unit. Generally speaking, per-unit subsidy limits will be higher in higher rent areas, or if the Project is offering lower rents. Due to this variability, these limits are published annually in a separate document on the program webpage, along with the NOFA and application documents.

Subsection (8) was stricken because MHP does not make adjustments based on changes in the Consumer Price Index. Sufficient authority exists in subsection (5) to
increase the limits over time as needed.

**Subsection (l) (7)**

This subsection clarifies how the NPLH loan amount is calculated. “Fiscal Integrity” is a term currently defined in Section 101 of the Guidelines. This subsection is being added only for purposes of clarification and does not represent a change in Department underwriting practices.

**Subsection (m)**

This new subsection requires Applicants to elect and disclose whether or not a Project will be part of an application to TCAC seeking tiebreaker incentives for hybrid 4 percent and 9 percent tax credit Projects. A Sponsor that will apply to TCAC seeking hybrid tiebreaker incentives may submit applications jointly with a County for NPLH funds for one or both hybrid component Projects, but each component Project must apply independently with a separate application.

It is important for a Sponsor to decide, prior to applying to the Department, whether a Project will or will not be part of a hybrid 4 percent and 9 percent tax credit Project that will later seek TCAC tiebreaker incentives for hybrids. It is extremely challenging and time consuming for the Department to convert a Project to or from a hybrid after the award, and such changes after award have the potential to affect the integrity of the Department’s competitions.

More importantly, the NPLH Guidelines treat 9 percent and 4 percent Projects differently when scoring Project readiness to proceed to construction. The ability of a 4 percent Project that is part of a hybrid to proceed to construction is tied to the fate of its 9 percent partner, such that the 4 percent hybrid component is not truly ready to proceed in the same manner as a non-hybrid 4 percent Project. See Section 205 (d) (1) and (2) for related changes affecting readiness scoring.

The hybrid election is irrevocable unless all of the following conditions are met as determined by the Department:

A. The 9 percent hybrid component is seeking to convert to a 4 percent Project so that both Projects will be receiving 4 percent tax credits;

B. No additional funding from the Department will be required, nor requested or awarded;

C. If the Project was approved in a competitive funding round, there will be no negative impact on Project scoring resulting from the conversion from 9 percent to 4 percent.
These conditions for revoking a hybrid election were permitted as a result of public comment received on this issue in order to permit more conversions from 9 percent to 4 percent tax credit projects.

The remainder of the changes in this section are minor, non-substantive changes related to capitalization, re-numbering, or display of numbers.

Section 201. Threshold Requirements for Noncompetitive Allocation

Clarifications made throughout this section specify the actual dates related to acceptance and use of Noncompetitive Allocation funds. See discussion in Section 102 above.

In addition, subsection (c) now extends the timeframe for submission of the Plan to Combat Homelessness to no later than February 15, 2021. Previously, these plans had to be submitted no later than 12 months from the Noncompetitive Allocation NOFA release. Now the submission deadline corresponds with the last day for submitting applications utilizing Noncompetitive Allocation funds.

Section 202. Project Threshold Requirements

Subsections (b) (1) and (2)

These sections clarify that in order for a Project underwritten by the Department to be eligible it must be a minimum of five Units and it must serve the Target Population. This is not a change to existing Program requirements. This language was placed here as a convenience to the reader.

Subsection (b) (3)

This section clarifies that, with the Department’s approval, Projects may qualify for an exception to the one for one Unit replacement rule contained in the Department’s Uniform Multifamily Regulations (UMRs) if units are proposed to be demolished. This is not a change to existing Program requirements. This language was placed here as a convenience to the reader.

Deleted Subsection (c)

This subsection is existing law relating to prioritization of subpopulations when using Noncompetitive Allocation funds. It was moved from the Project Threshold section to Section 211, which discusses Tenant Selection requirements. Its placement in Section 211 is more appropriate, since it is a tenant selection issue rather than an application evaluation issue.
Subsections (d) and following

A number of the subsections within Project Threshold were re-ordered to better reflect when they are evaluated as part of the Department’s application selection process. Headings were also added for additional clarity regarding process evaluation. Except as discussed in the specific subsections below, no changes were made to the existing requirements governing these issues.

Subsection (d)

This subsection now discusses site control. Language was added to this section in (d) (2) to clarify that the form of site control documented at application stage must grant site control at least through the anticipated award date under the NOFA.

The Department acknowledges that, for example, some Sponsors do not want to pay to maintain site control of a property if they are not going to be awarded NPLH funds. However, the Department must be sure that the Sponsor will not lose site control during the time period in which award decisions are being made. Once awarded funds, it is implied that Sponsors must take steps to maintain site control of a property so that development of the Project can proceed.

Subsection (e)(3)

This section was added to the NPLH integration requirements to permit the total number of NPLH units to be disproportionately allocated to the 4 percent component of a hybrid transaction if all of the following conditions are met:

A. The hybrid transaction is a single building transaction and all of the NPLH Assisted Units will be located within the same physical structure;
B. If the building containing both components of the hybrid tax credit transaction has greater than 20 Units, the total number of NPLH Assisted Units within the building is equal to or less than 49 percent of the total units within this building, and
C. The Applicant can demonstrate to the reasonable satisfaction of the Department that the NPLH Assisted Units will be reasonably distributed throughout the building to facilitate compliance with the other requirements of Section 202 (e).

These conditions are permissible because they are consistent with the Department’s policy objectives for the integration requirement, and consistent with other Program requirements.

Subsection (g)

Language was added in this subsection to clarify that Article XXXIV documentation must be approved prior to award of funds by the Department rather than prior to execution of the standard agreement. This change was made because it is better to identify any problems with Article XXXIV compliance as soon as possible so that if adjustments need to be made to the number of units funded and to the size of an award in order to bring a Project into compliance, the Development Sponsor has more time to
plan for these changes.

Subsection (h) (2)

This subsection was added to make clear that Development Sponsors must also submit authorizing resolutions as part of the NPLH application. Authorizing resolutions are required of all parties that will enter into a standard agreement with the Department.

Subsection (h) (6)

This section further details that the Department may also request other documents with the application that are necessary to evaluate overall Project feasibility, as well as compliance with existing Program requirements. These documents may include, but are not limited to: a market study, appraisal, preliminary title report, environmental reports, and documentation of service provider and property manager experience. These documents are standard items typically already prepared by the Development Sponsor for other funding applications associated with the Project. Specific “age” requirements for these reports, if any, will be discussed in the NOFA or NPLH application form, as these requirements may vary by Project type or situation.

The requirement to provide a market study has been modified to apply only to Projects which also contain other non-NPLH units since some of these tenants may come from marketing or waiting lists targeted to a broader low income tenant population rather than a closed referral system such as a CES. In addition all NPLH Projects, including those not required to submit a market study, must provide information on the anticipated need for the NPLH units and how referrals will be made in compliance with the requirements of Section 206 (Occupancy and Income requirements) and Section 211 (Tenant Selection requirements). This information will be requested separately in the application, apart from any market study that may be required.

Subsection (k) (3)

Language added to this subsection clarifies that if an Applicant believes that relocation requirements do not apply to a Project, they must explain and document why relocation is not applicable.

Additional certifications to this effect may also be requested by the Department. The remainder of the changes in this section are minor, non-substantive changes related to capitalization or re-numbering/re-lettering and movement of certain exiting Guidelines provisions to other sections of the Guidelines.

Section 203. Supportive Services

Subsections (h) and (i)

These subsections were added to permit changes to a Project’s lead service provider after submittal of the NPLH Project application, as specified in these subsections, with prior approval from either the Department, for loans underwritten by the Department, or by the County for loans made by an Alternative Process County or for Shared Housing.
The remainder of the changes in Section 203 are grammatical or other nonsubstantive changes.

Section 204. Application Process

Subsection (d) (6) (D)

This subsection was added to clarify that if the total funds requested for a County population group(s) is less than the amount made available in the NOFA, the Department may use funds from that population group(s) to fund other eligible unfunded applications in other oversubscribed population group(s). In exercising this option, the Department shall also make additional funds available to those undersubscribed population groups in future funding rounds in amounts that were previously taken from their allocations.

If a population group(s) is undersubscribed, it is prudent for the Department to use funds from the undersubscribed application pool(s) to fund applications in areas that are oversubscribed in order to be able to fund as many feasible and ready Projects under a particular NOFA as possible. However, the Department also recognizes the need to continue to provide opportunities for the undersubscribed areas to be made whole in future years when they may be more ready to use the funds.

Subsection (e)

This section clarifies that Department funding decisions are subject to appeal in accordance with the appeals process detailed in the NOFA. It is now a typical practice among Department multifamily housing programs to have a process for Applicants to appeal decisions made pertaining to threshold review and scoring of their applications.

The remainder of the changes in this section are minor, non-substantive changes related to capitalization or correction of citations.

Section 205. Competitive Allocation Application Rating Criteria

Subsection (b)

Changes to this section do the following:

(1) Clarify that other Department sources will count in the leverage calculation if they are committed. This is consistent with current program practice.

(2) Incorporate the term Enforceable Funding Commitment as it relates to what counts as committed funds for purposes of the development funding leverage calculation. See discussion of this term in Section 101 above.

(3) Clarify that Projects utilizing 4 percent tax credits, including 4 percent
components of a hybrid Project, will have these funds automatically counted in this leverage calculation. Due to the competitive nature of the 9 percent tax credit program, 9 percent tax credits will not count in the leverage calculation unless these funds are committed at the time of application. In addition, Projects utilizing other funding sources will not have these funds counted if the funds are not already committed to the Project, due to the competitive nature of most other available funding sources.

(4) Clarify that Noncompetitive Allocation Funds will count toward this calculation if the County has also submitted their County Noncompetitive Allocation Acceptance Form and Authorizing Resolution pursuant to the requirements of the amended subsection (b) in Section 201.

(5) The methodology for establishing the per-unit capital loan limits under Section 200 will not be further detailed in the NOFA; so, the reference to the NOFA in subsection (b) (4) was removed. The actual per-unit limits for every County will be published with the NOFA on the Department’s website as set forth in Section 200 (l) (5) (D).

(6) Clarify that other Department funds will count as committed if they have been awarded prior to NPLH finalizing its preliminary point scores. This is not new language. It is consistent with language currently in place in Section 205 (d)(2) (B) for Readiness points.

(7) Clarify that land donated or leased at below market value will be counted where the value of the donation or lease at the time of the transaction is established by an appraisal. Appreciation and any upfront lease payments, administrative fees, or mandatory lease payments in excess of $100 per year will not be counted in determining the value of this donation.

These provisions are consistent with TCAC requirements and are necessary to ensure the land is truly being donated, and that the terms of the lease or other actions related to the land do not change the character of that transaction from one of donation to one of revenue generation.

The deleted text in this subsection related to appraisal requirements was moved to Section 202 (h) (6) where submission of an appraisal with the application is discussed.

Subsection (c)

Changes to this subsection:

1) Incorporate the term Enforceable Funding Commitment as it relates to what counts as committed funds for purposes of the rental or operating subsidy leverage calculation. See discussion of this term in Section 101 above; and

2) Further clarify that contributions made in local operating assistance in support of the NPLH Assisted Units can count as operating subsidy leverage for this rating factor if the contribution is made by a local government, the Development
Sponsor or another entity documented through an award letter, reservation of funds, commitment letter, or contract which qualifies as an Enforceable Funding Commitment. This is consistent with current program practice.

3) Clarify that other Department funds for rental or operating assistance will count as committed if they have been awarded prior to NPLH finalizing its preliminary point scores. This is not new language. This is consistent with language currently in place for in Section 205 (d) (2) for Readiness points.

Subsections (d) (1) and (2)

Changes to this subsection:

(1) Clarify that Projects utilizing 4 percent tax credits and deferred developer fee will have these funds automatically counted in the construction and permanent financing committed (Readiness to Proceed) calculations, while Projects utilizing other funding sources will not have these funds counted if the funds are not already committed to the Project, due to the competitive nature of most other available funding sources. This is consistent with current program practice.

(2) Clarify that 4 percent tax credit components of a TCAC hybrid Project will be eligible for the same number of points as 9 percent tax credit Projects in these “financing committed” rating categories. The ability of a 4 percent Project that is part of a hybrid to proceed to construction is tied to the fate of its 9 percent partner, such that the 4 percent hybrid component is not truly ready to proceed in the same manner as a non-hybrid 4 percent Project.

Consequently, the proposed change provides a maximum of five points for a 4 percent Project that is part of a hybrid, the same as a 9 percent Project. Due to the competitive nature of the 9 percent program, the Department will continue to treat 9 percent and hybrid Projects differently from all other Projects.

(3) Add back in other existing language mistakenly deleted from the May 8, 2019 draft Guideline amendments related to receiving credit for financing commitments for deferred payment financing, grant funds, or subsidies from other Department programs.

Subsection (d) (3)

Changes to this subsection remove submission of the Phase I/II environmental reports from this rating category. Since new construction Projects will be required to submit a Phase I/II as part of the Project Threshold environmental and financial feasibility analysis, points will no longer be awarded for submission of these documents.

Subsection (d) (4)

Changes were made to the point scoring for land use approvals to award points if a Project provides evidence of submission of a complete application to the relevant local authorities (city or county) for land use approval under a nondiscretionary local approval process, where the application has been neither approved nor disapproved. A
nondiscretionary local approval process is defined within this subsection consistent with
the definition used for this term in the MHP Guidelines. This change was made to provide
points to Projects that may be eligible under for approval under a streamlined local
approval process. This change was made in response to public comment.

Subsection (e)
Language was added to this section to reiterate that Projects must submit a copy of
their initial supportive services plan meeting the requirements of Section 203 of the
Guidelines with their application in order to score the “Extent of On-Site and Off-Site
Supportive Services” rating category. Section 202 (h) requires that the initial supportive
services plan be submitted with the application. This additional language clarifies that
the supportive services plan is used for scoring purposes, as well as to evaluate
compliance with Section 203 of the Guidelines.

Subsection (f)
Changes to this section:

1) Allow only the experience of the lead service provider, which may be the County
behavioral health department or its equivalent, to count under the “Past History of
Evidence-Based Practices” rating category. The types of activities performed
which qualify as experience under this category are typically not activities that
developers or property managers will themselves engage in as part of performing
their functions as the developer or property manager.

2) Clarify that the Department will request verification of this information as set forth
in the application in order to receive points for this rating factor. This change was
made because verification of this information may be easier than having to
provide direct documentation that the lead service provider has a history of
performing specific therapeutic practices.

The remainder of the changes in this section are minor, non-substantive changes
related to capitalization, re-numbering/re-lettering, or display of numbers.

Section 206. Occupancy and Income Requirements

Subsection (b)
Changes to this section clarify that:

1) Tenant eligibility criteria must be satisfied prior to being referred to an NPLH
Project. This clarification was added in response to public comment on this issue.

2) CoCs must approve the procedures used by the County to document a person’s
status as Chronically Homeless, Homeless, or At-Risk of Chronic Homelessness.
This is consistent with the requirement in Section 211 that all referral protocol for
NPLH Assisted Units must be developed in collaboration with the local Continuum of
Care. These changes were made amidst concerns that the NPLH referral process
not be siloed off by the County from other referral processes utilizing a CES or other
similar prioritization system for persons At-Risk of Chronic Homelessness, but that the process of referring NPLH tenants be a process developed collaboratively.

The remaining change to this section is a minor, non-substantive change related to display of numbers.

Section 207. Rent Limits and Transition Reserve

Subsection (f)

Changes to this section:

1) Clarify that the transition reserve may be capitalized from sources other than NPLH, or funded from annual Project cash flow in amounts to be approved by the Department. Welfare and Institutions Code Section 5849.7 prohibits NPLH funds from being used for reserves other than operating reserves. However, being able to fund the transition reserve from Project cash flow may be feasible for some Projects.

2) Clarify that withdrawal and the use of funds in the reserve shall be subject to the Department’s prior review and written approval. This is consistent with current Department practice.

3) Clarify that in the event that the transition reserve is exhausted and there are no other sources of rental or operating assistance available that rents on NPLH units may be increased to the amount necessary to preserve Fiscal Integrity but in no event can rents exceed 60% AMI. This change is consistent with the “float up” level permitted by other Department programs. This change was made in response to public comment.

4) Permit the Department to modify transition reserve requirements to provide greater flexibility in setting of transition reserve amounts based on an analysis of the risk associated with specific rental assistance programs or specific state or local operating assistance available to the Project. The Department may modify transition reserve requirements to include adjusting the amount of the required transition reserve, setting different amounts for different rental assistance programs to reflect the relative risk associated with these programs, allowing the transition reserve to be funded and controlled by a locality, establishing a transition reserve funded and held by the Department rather than the Project, or adjusting the level to which Rents may be increased upon subsidy termination and loss of other available rental or operating assistance.

These changes conform to changes made in other Department rental housing programs, and were made because greater flexibility may be needed in the sizing or administration of the Project transition reserve based on the financial needs of a Project and local capacity. Additional research will also be done to determine the historical need for transition
reserves which may inform future Department practices on this issue.

5) Clarify that requirements for increases to transition reserves imposed as a result of the above risk analysis shall only apply to Projects that are awarded Department funds after the effective date of these modifications. This clarification was made in response to public comment.

The remainder of the changes to this section are minor, non-substantive changes related to capitalization, display of numbers, and grammatical corrections.

Section 208. Underwriting Standards

Changes to this section:

1) Clarify that the list of UMR sections noted in this section of the Guidelines is not the complete list of UMR sections applicable to NPLH. The entirety of the UMRs applies to NPLH, unless a UMR requirement is modified by a specific section of the NPLH Guidelines.

2) Add Section 8302 to the list of UMR sections specifically mentioned in the Underwriting Standards provisions of the NPLH Guidelines, since UMR 8302 is also mentioned in changes discussed to Section 202 (b) above.

3) Clarify site control requirements as discussed in Section 202 (d) above.

4) Include the same modifications relating to the UMR developer fee calculation as are included in the new MHP Guidelines in order to achieve consistency among the two programs in this calculation.

5) Maintain the rule that a deferred Developer Fee shall only be paid as a priority from cash flow to the extent that the aggregate of the Developer Fee paid from sources and paid as deferred does not exceed $3,500,000. This is consistent with the MHP Guidelines.

6) Require that the limits specified in 8314 (e) for supportive services costs paid as operating expenses be increased annually for Projects at a rate of 3.5 percent per year, rather than 2.5 percent per year. This change was made in response to public comment.

The remainder of the changes in this section are minor, non-substantive changes related to re-numbering and display of numbers.
Section 209. Capitalized Operating Subsidy Reserve

Subsections (a) and (c)

Changes to these subsections will:

1) Maintain the current methodology for calculating the COSR per-unit subsidy limits for Projects with 9 percent tax credits based on a formula base amount of 30 percent AMI. While the calculation formula for capital funding is changing to be consistent with MHP, the Department does not wish to make any changes to the COSR calculation methodology at this time, for either 9 percent tax credit Projects, or Projects not using 9 percent tax credits.

2) Provide the Department with greater flexibility to adjust the COSR per unit subsidy limits over time through documents published with the NOFA and application. As the Department underwrites more Projects with COSRs, we will have more data to make necessary adjustments to the per-unit subsidy amounts published with the NOFA. Because of the difficulty of recalculating COSR amounts, once loans have closed, any changes shall be applicable to new awards and contracts subsequent to posting of adjustments, and not to existing contracts or loan agreements.

Subsections (d)

Clarify what must be documented in order to be eligible to request assistance for a COSR. These changes are not new, but simply clarify existing requirements.

The remainder of the changes in this section are minor, non-substantive changes related capitalization, re-lettering, naming conventions, and the display of numbers.

Section 211. Tenant Selection

Subsection (a)

Changes to this section clarify that tenant eligibility criteria must be satisfied prior to being referred to an NPLH Project. This change was made in response to public comment.

In addition, all referral protocol for NPLH Assisted Units must be developed in collaboration with the local Continuum of Care and implemented consistent with program requirements. These changes were made amidst concerns that the NPLH referral process not be siloed off by the County from other referral processes utilizing a CES or other similar prioritization system for persons At-Risk of Chronic Homelessness, but that the process of referring NPLH tenants be a process developed collaboratively.

Subsection (b)

Consistent with Welfare and Institutions Code 5849.9, this language requires that NPLH-eligible persons who are Homeless or At-Risk of Chronic Homelessness be
prioritized for Units funded with Noncompetitive Allocation funds. This language was previously in Section 202 of the Guidelines, but is being moved to this section because the requirement is related to tenant selection rather than application evaluation. This requirement does not change the other NPLH requirements related to use of the local Coordinated Entry Systems (CES) for referrals of persons who are Homeless or Chronically Homeless.

Subsection (g)

This section was added to clarify that numbers or percentages of specific NPLH subpopulations to be served will not be regulated by the Department if a County is using its CES for all referrals to NPLH Assisted Units. For example, if a Project proposes to use its CES system for all of its NPLH referrals, it will not be restricted to a maximum of 30 percent of the Units for persons At Risk of Chronic Homelessness in accordance with the application rating factor in Section 205 (a) (2) (B).

CES system protocols developed by the County and the Continuum of Care should prioritize who gets served among the highest need eligible households meeting NPLH Target Population requirements. If a CES system is used for all NPLH referrals, including for persons At-Risk of Chronic Homelessness, the Department will not restrict or require that a Project serve a certain percentage of persons as Chronically Homeless, or At-Risk of Chronic Homelessness. Over time, the composition of a County’s Homeless population may change, such that there are fewer persons with serious mental illness who are Chronically Homeless, for example. Therefore, it is important that Counties let their CES protocols dictate prioritization for NPLH units consistent with Target Population qualifications, the statutory requirement to prioritize Homeless and those At-Risk of Chronic Homelessness in use of Noncompetitive Allocation funds, and the changing needs of the County over time.

The remainder of the changes in this section are minor, non-substantive changes related to capitalization, display of numbers, and re-lettering of subsections.

Section 213. Other Requirements

Subsection (b) – Changes to this section require the Department to defer to the determination of TCAC if a Project receiving tax credits has requested an exemption from the TCAC accessibility requirements.

The other change to this section is a minor, non-substantive change related to capitalization.

Section 214. Reporting

The change to this section is a minor, non-substantive changes related to capitalization.
Section 217. Management and Maintenance

The changes to this section are minor, non-substantive changes related to capitalization and punctuation.

Section 218. Defaults and Loan Cancellations

The changes to this section are minor, non-substantive changes related to capitalization.

ARTICLE III. ALTERNATIVE PROCESS COUNTY ALLOCATIONS

Section 300. Alternative Process County Designation

Subsection (a)

Section 300 sets forth the requirements for the APC designation process. The existing language in this subsection requires all APC designations to occur no later than 30 days after the Department’s initial NOFA, (issued August 15, 2018). This does not enable additional designations to occur. Changes to this subsection will enable additional Counties with at least 5 percent of the state’s Homeless population to be designated as an APC.

Changes to this section also eliminate the requirement that existing APCs get re-designated every two years, unless their existing designation as an APC is revoked or relinquished. Once a County is designated as an APC, it is not administratively necessary or useful to re-examine every two years much of the same information collected with the initial designation package, unless the County’s APC designation is revoked or relinquished. Other standards exist in Section 311 of the Guidelines for monitoring the ongoing performance of an APC.

The remainder of the changes to this section are minor, non-substantive changes related to capitalization, and display of numbers.

Section 301. Method of Distribution

The changes to this section are minor, non-substantive changes related to capitalization or correction of citations.

Section 302. Uses and Terms of Program Assistance

Subsection (e)

This section was added, consistent with the prohibitions discussed in Section 200 (e) regarding stacking NPLH funds with other HCD funding sources. Changes to this section are consistent with changes made to Section 200 (e). See discussion in Section 200 (e) above.
The remainder of the changes to this section are minor, non-substantive changes related to re-lettering of subsections.

**Section 303. Occupancy, Income, and Rent Limit Requirements**

**Subsection (f)**

Consistent with the change made for HCD-funded Projects, language was added to this section to require CoCs to approve the procedures used by the County to document a person’s status as Chronically Homeless, Homeless, or At-Risk of Chronic Homelessness. This change was made to ensure documentation procedures are developed collaboratively with the local CoC.

The remainder of the changes to this section are minor, non-substantive changes related to capitalization, display of numbers or grammatical corrections.

**Section 304. Underwriting Standards and Other Requirements**

**Subsection (d)**

Language was added to this subsection to provide greater flexibility for the Department to approve other methodologies proposed by the APC for establishing per-unit subsidy limits.

**Subsection (h)**

Language was added to this subsection to:

1) Clarify that the withdrawals from the NPLH transition reserve shall be subject to the County’s prior review and written approval.

2) Clarify that in the event that the transition reserve is exhausted and there are no other sources of rental or operating assistance available that rents on NPLH units may be increased to the amount necessary to preserve Fiscal Integrity but in no event can rents exceed 60% AMI. This change is consistent with the “float up” level permitted by other Department programs. This change was made in response to public comment.

The remainder of the changes to this section are minor, non-substantive changes related to capitalization, display of numbers or grammatical corrections.

**Section 305. Capitalized Operating Subsidy Reserve**

**Subsection (b)**

Changes to this section clarify what must be documented in order to be eligible to request assistance for a COSR. These changes are consistent with the changes made
in Section 209 for the Department’s NPLH loans. These changes are not new, but simply clarify existing requirements.

The other changes to this section are minor non-substantive changes related to the re-numbering of sections.

**Section 307. Tenant Selection, Rental Agreements and Grievance Procedures**

**Subsection (c)**

Language was added to this subsection to clarify that the requirement to prioritize those who are Homeless and At-Risk of Chronic Homelessness in use of Noncompetitive Allocation funds is a statutory requirement of Welfare and Institutions Code Section 5849.9. This requirement does not change other NPLH requirements related to use of the local CES for referrals of persons who are Homeless or Chronically Homeless.

**Subsection (d)**

Language was added to this subsection to clarify that tenant eligibility criteria must be satisfied prior to being referred to an NPLH Project, and all referral protocol for NPLH Assisted units must be developed in collaboration with the local Continuum of Care and implemented consistent with Program requirements. This language was added in response to public comment on the issue of tenant eligibility, and amidst concerns that the NPLH referral process not be siloed off by the County from other referral processes utilizing a CES or other similar prioritization system for persons At-Risk of Chronic Homelessness, but that the process of referring NPLH tenants be a process developed collaboratively.

**Section 308. Disbursement of Funds**

**Subsections (a) and (b)**

These subsections were modified to permit APCs to submit no more than four draws per year. This change was made so that draws can be better timed to when the cash is actually needed. This may help reduce the amount of interest the state pays on the NPLH bonds. The remaining change in this section is related to a re-lettering of subsections.

**Section 309. Reporting**

The change to this section is a minor, non-substantive correction of the listing of the dates in this section.

**Section 310. Legal Documents**

The changes to this section are minor, non-substantive corrections of
capitalization.

**ARTICLE IV. NONCOMPETITIVE ALLOCATIONS SHARED HOUSING REQUIREMENTS**

Section 400. Noncompetitive Allocations Shared Housing Administration

Subsections (c) and (d)

These changes clarify what the actual dates are for meeting Noncompetitive Allocation deadlines previously adopted by the Department. When the NPLH Guidelines were first adopted, these specific dates were not known because they were tied to certain time periods following release of the first NOFA under the program. These specific dates have also previously been provided in Department NOFAs and other communications, so they are not new, and reflect no change in program requirements.

The additional change to this section is a minor, non-substantive correction of capitalization.

Section 401. Shared Housing Noncompetitive Allocations Method of Distribution

The changes to this section are minor, non-substantive corrections of capitalization.

Section 402. Uses and Terms of Program Assistance

Subsection (d)

This section was added, consistent with the prohibitions discussed in Section 200 (e) regarding stacking NPLH funds with other HCD funding sources. Changes to this section are consistent with changes made to Section 200 (e). See discussion in Section 200 (e) above.

Section 403. Occupancy Requirements

Consistent with the change made for HCD-funded Projects, language was added to this section to require CoCs to approve the procedures used by the County to document a person’s status as Chronically Homeless, Homeless, or At-Risk of Chronic Homelessness. This change was made to ensure documentation procedures are developed collaboratively with the local CoC.

The remainder of the changes to this section are minor, non-substantive changes related to capitalization, display of numbers or grammatical corrections.
Section 404. Underwriting Standards and Other Requirements

Subsection (d)

Language was added to this subsection to provide greater flexibility for the Department to approve other methodologies proposed by the County for establishing per-unit subsidy limits.

Subsection (i)

1) Clarify that the withdrawals from the NPLH transition reserve shall be subject to the County’s prior review and written approval.

2) Clarify that in the event that the transition reserve is exhausted and there are no other sources of rental or operating assistance available that rents on NPLH units may be increased to the amount necessary to preserve Fiscal Integrity but in no event can rents exceed 60% AMI. This change is consistent with the “float up” level permitted by other Department programs. This change was made in response to public comment.

The remainder of the changes to this section are minor, non-substantive changes related to capitalization, display of numbers correction of citations, or grammatical corrections.

Section 405. Capitalized Operating Subsidy Reserve

Changes to this section clarify what must be documented in order to be eligible to request assistance for a COSR. These changes are consistent with the changes made in Section 209 for the Department’s NPLH loans. These changes are not new, but simply clarify existing requirements.

The other changes to this section are minor non-substantive changes related to the re-numbering of sections.

Section 407. Tenant Selection, Rental Agreements and Grievance Procedures

Subsection (c)

Language was added to this subsection to clarify that the requirement to prioritize those who are Homeless and At-Risk of Chronic Homelessness in use of Noncompetitive Allocation funds is a statutory requirement of Welfare and Institutions Code Section 5849.9. Since Shared Housing can only be funded with Noncompetitive Allocation funds, this prioritization applies to referrals to Shared Housing. This requirement does not change other NPLH requirements related to use of the local CES for referrals of persons who are Homeless or Chronically Homeless.
Subsection (d)

Language was added to this subsection to clarify that tenant eligibility criteria must be satisfied prior to being referred to an NPLH Project, and all referral protocol for NPLH Assisted Units must be developed in collaboration with the local Continuum of Care and implemented consistent with Program requirements.

This language was added in response to public comment on the issue of tenant eligibility, and amidst concerns that the NPLH referral process not be siloed off by the County from other referral processes utilizing a CES or other similar prioritization system for persons At-Risk of Chronic Homelessness, but that the process of referring NPLH tenants be a process developed collaboratively.

The additional change to this section is a minor, non-substantive correction of capitalization.

Section 410. Legal Documents

The changes to this section are minor, non-substantive corrections of capitalization.