

Portfolio Restructuring Guidelines  
Department of Housing & Community Development

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## Article 1. Provisions for Restructuring

### Section 100. Purpose and Scope

- (a) These guidelines implement and interpret Sections 50560, 50561 and 50562, Chapter 3.9 of Part 2 of Division 31 of the Health and Safety Code ("Chapter 3.9").
- (b) Chapter 3.9, also known as AB 1699, was enacted in 2012. It authorizes the California Department of Housing and Community Development (Department), under specified loan programs stated in subsection (e), to extend the term of existing multifamily housing loans, subordinate a Department loan to new debt and authorize an investment of tax credit equity in developments with Department loans.
- (c) These guidelines are applicable to the Restructurings, as defined below, whose loan documents are recorded after the effective date of these guidelines.
- (d) Upon its effective date, these guidelines replace the provisions of SB 707 (Statutes of 2007), and the guidelines adopted to implement that legislation. Project restructurings closed under SB 707 rules will continue to be bound by those rules. Projects originally financed by the California Housing Finance Agency will also continue to be governed by the provisions of SB 707. For transactions substantially underway under the provisions of SB 707 on the effective date of these guidelines, the Department may elect to close under either SB 707 or these guidelines.
- (e) These guidelines apply exclusively to Restructuring of loans originally funded under the following Department programs:
  - 1) Rental Housing Construction Program Original (RHCP-O) established by Chapter 9 (commencing with Section 50735);
  - 2) the Special User Housing Rehabilitation Program (SUHRP) established by Section 50670;
  - 3) the Deferred Payment Rehabilitation Loan Program (DPRLP) established by Chapter 6.5 (commencing with Section 50660);
  - 4) the rental component of the California Natural Disaster Assistance Program (CALDAP) established by Section 50671;
  - 5) the State Earthquake Rehabilitation Assistance Program (SERA), established by Section 50671;
  - 6) the rental component of the California Housing Rehabilitation Program (CHRP-R) established by Section 50668.5;
  - 7) the component of the Rental Housing Construction Program funded with bond proceeds, (RHCP-B) pursuant to Section 50771.1;
  - 8) the Family Housing Demonstration Program (FHDP) established with Section 50880; and

- 9) the Families Moving to Work Program (FMTW) established by Section 50880.
- (f) Unless contradictory to any other express provision in the Portfolio Restructuring Guidelines or prohibited by any other applicable statutory authority, all references in the Portfolio Restructuring Guidelines to any specific or general provision of the Uniform Multifamily Regulations (California Code of Regulations Title 25, Division 1, Chapter 7, subchapter 19, § 8300 et seq.) (UMRs) shall be interpreted to incorporate such provision (of the 2017 enacted UMRs) and any future amendment thereto.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(a-c), Section 50561(g), Section 50515.2(h), Health and Safety Code.

### Section 101. Definitions

In addition to the definitions found in Part 1 of Division 1 of the Health and Safety Code, and Health and Safety Code Section 50675.2, the following definitions and those found in the Uniform Multifamily Regulations (UMRs) (25 CCR 8301) and the Multifamily Housing Program (MHP) Regulations (25 CCR 7301) shall apply.

- (a) “Early Special Rent Increase” means a Special Rent Increase occurring prior to the closing of the Restructuring transaction, pursuant to Section 108(b)(4)(A).
- (b) “Existing Household/Tenant” means a household/tenant residing in the project on the date that an application for restructuring, on Department forms, is received by the Department.
- (c) “Fiscal Integrity” means that the total Operating Income plus funds released pursuant to the Regulatory Agreement from the operating reserve account is sufficient to: (1) pay all current Operating Expenses; (2) pay all current debt service (excluding deferred interest); (3) fully fund all reserve accounts (other than the operating reserve account) established pursuant to the Regulatory Agreement. The ability to pay any or all of the permitted annual Distributions shall not be considered in determining Fiscal Integrity.
- (d) “Household Income” means the income of the household occupying an Assisted Unit as calculated in accordance with rules and procedures adopted by the California Tax Credit Allocation Committee (TCAC), including TCAC’s rules for determining the placed in service date.
- (e) “Net Developer Fee” means developer fee paid less contributions to the Project of cash or real property by the sponsor or their affiliate.
- (f) “Original Program” means the Department funded program that initially provided financial assistance to the Project as listed in Section 100(e).

- (g) “Remaining Useful Life” means the period during which the physical characteristics of the Project are projected to comply with habitability standards applicable to the low-income housing tax credit program.
- (h) “Rent” means the same as “Gross Rent”, as defined in the Internal Revenue Code (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits, paid by the tenant for the use and occupancy of an Assisted Unit, and a utility allowance established in accordance with TCAC regulations. For units assisted under the HUD Section 8 or similar rental subsidy programs, Rent includes only the tenant contribution portion of the contract rent.
- (i) “Restructuring” means one or more of the following: extension of the Department’s loan term (or terms, if there are multiple Department loans), subordination of the Department’s loan or loans to a new senior loan or loans, and/or tax credit investment under this Article. Other transactions, such as those limited to the placement of new junior public agency debt without required payments and assignments of limited partner interests do not constitute a Restructuring. The date of Restructuring shall be considered to be the date of recordation of a new Department regulatory agreement.
- (j) “Special Rent Increase” means a rent increase greater than the amount permitted under the Original Program’s regulations and statute.
- (k) “Sponsor” is the entity relied upon by the Department for experience and capacity and which the Department expects to maintain control over the Project. In a project with multiple layers of ownership, the Sponsor cannot have more than one entity between itself and the Borrower. For example, if the Borrower is a limited partnership with a limited liability company as the general partner, the Sponsor must either be a member of the company or a non-member manager.
- (l) “Unit” means a residential unit that is used as a primary residence by its occupants, including efficiency units and residential hotel units.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(d), 50561(g), Health and Safety Code.

## Section 102. Eligible Projects

Eligible Projects must meet all of the following criteria:

- (a) The Project must have a loan made under one or more of the Original Programs.
- (b) The Department must determine that the Remaining Useful Life of the Project, upon completion of rehabilitation, if any, and as based in part on a third party physical needs assessment, equals or exceeds the extended loan term.

- (c) The Sponsor and Borrower may not be in breach or default of the Original Program loan documents nor under any other Department programs. However, and under its general workout authority, the Department will consider requests for Restructuring in accordance with these guidelines where the only uncured breach is that the loan maturity date has passed.
- (d) If the Restructuring involves combining the Department-assisted development with other developments, the following conditions must be satisfied:
  - (1) All of the developments in the combined Project must have a single owner and property manager;
  - (2) When the developments have been combined, there may be at most one lender with required payments senior to the Department's loan;
  - (3) There must be a single audit and annual report covering all sites;
  - (4) The Department must be secured against all sites, with lien priority relative to local public agency lenders and use of cash flow available for residual receipts loan payments determined in accordance with Section 8315 of the Uniform Multifamily Regulations, except that the formula for calculating the Department's share of residual receipts payments may be adjusted to avoid a reduction in projected payments to local public agency lenders;
  - (5) The Department must be named on insurance policies covering all sites, with coverage meeting Department requirements; and
  - (6) There shall be no reduction in the number of Assisted Units.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(a), Section 50560(d), 50561(a), Health and Safety Code.

### Section 103. Requirements for Loan Extensions Only

The following requirements apply solely to Projects that only involve an extension of the Department's loan, without a new tax credit investment or the Department loan being subordinated to new debt.

- (a) The extension must be for at least 10 years, but not more than 55 years;
- (b) The Special Rent Increases set forth in Section 108 are not permitted in cases where the Department loan is only being extended, except that Rents for Existing Households in RHCP-O projects may be adjusted in accordance with subsection 108(c)(3) and Section 109;

- (c) Starting at the time of the extension of the Department's loan, the Project must achieve Fiscal Integrity for at least 15 years, or the length of the extension if the extension is shorter than 15 years;
- (d) The operating reserve requirements of Section 8308(b) do not apply. The Project shall be required to maintain the operating reserve deposit requirements of its Original Program Regulatory Agreement until the balance in the operating reserve equals four months of required debt service, plus eligible operating expenses, plus required deposits to replacement reserve. Once this balance is achieved, the requirements of Section 8308(c) shall apply.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(a-b), Section 50561(g), Health and Safety Code.

#### Section 104. Requirements Pertaining to All Projects Restructured under this Chapter

- (a) After completion of the Restructuring of an Eligible Project under these guidelines, the Original Program statutes and regulations shall no longer apply to the Project, except as specifically noted in these guidelines.
- (b) The Sponsor of an Eligible Project which requests a Restructuring of the Project shall execute new loan documents reflecting the terms of the restructured loan as required by the Department and consistent with these guidelines. The principal amount of the new loan shall be the amount of the outstanding principal balance on the original loan. Interest accrued on the old loan shall carry over as accrued interest on the new loan.
- (c) All new regulatory agreements entered into under these guidelines shall include language specifically importing and preserving those third party beneficiary rights provided for in the Original Program regulatory agreement. The preservation of third party beneficiary rights will only accrue to tenancies that existed before or contemporaneous with the recordation of the new regulatory agreement. After the new regulatory agreement is recorded, new tenancies resulting from any cause will be regulated solely by the new regulatory agreement.
- (d) Borrower shall obtain the consent and signatures of all lien holders and third parties required to complete loan documents as required by the Department.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(b), 50562(a-b), Health and Safety Code.

#### Section 105. Requirements for Projects being Refinanced and/or Syndicated

The following requirements apply to Projects that are being Refinanced and/or Syndicated as part of the Restructuring:

- (a) Projects must be eligible as set forth in Section 102;
- (b) Restructuring requirements contained in Section 104 must be met;
- (c) After the Restructuring, the Project must achieve Fiscal Integrity for at least 15 years, as evidenced by a multiyear pro forma approved by the Department;
- (d) If the Project's Department loan is extended, the extension must be approved by the Department prior to the maturity date of the Original Program loan, and the extension must be for at least 10 years, but not more than 55 years (or 58 years if tax credit restrictions require this term);
- (e) The new and/or modified loans from other lenders are required to comply with Sections 106 and 107, and with Section 8315 of the Uniform Multifamily Regulations;
- (f) Rent and income restrictions must comply with Section 108;
- (g) Requirements for relocated Existing Households contained in Section 110 must be met;
- (h) The Project must comply with the underwriting requirements set forth in Section 112;
- (i) A complete application form and all required documents, including a relocation plan, are needed in order for the Department to begin evaluation of the Project with these requirements, and the application requirements set forth in Section 111 must be complied with.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(a), 50561(a-g), Health and Safety Code.

#### Section 106. Conditions on Subordination to Senior Loans

- (a) If the Restructuring will not involve rehabilitation, the Department may subordinate to new senior debt resulting in lower debt service, needed to pay off an existing senior loan with a balloon payment, or that otherwise increases feasibility.
- (b) If the Restructuring will involve rehabilitation and a Special Rent Increase:
  - (1) The Department may subordinate to new senior debt only as necessary for the feasibility of the rehabilitation project.

- (2) In evaluating feasibility, the costs of the rehabilitation project shall include costs of refinancing of existing debt (including closing costs, prepayment penalties, and yield maintenance charges), developer fee and other soft costs, and the rehabilitation work itself, but not reimbursements for past contributions to the project by the borrower, or for costs not directly related to the rehabilitation, such as limited partner buy-out costs.
  - (3) The rehabilitation work shall be limited to:
    - (A) Replacements documented as needed by a third party physical needs assessment and approved by the Department as necessary based on the Department's inspection of the Project and review of the third party study;
    - (B) Cost effective energy improvements; and
    - (C) Other improvements as approved by the Department.
  - (4) The rehabilitation shall be modest in size, scope and cost, as set forth in Section 7314 of the Multifamily Housing Program Regulations.
- (c) If the Restructuring will involve rehabilitation but not a Special Rent Increase:
- (1) The Department may subordinate to new senior debt necessary for the feasibility of the contemplated rehabilitation project, as described in subsection 106(b)(1) and (b)(2).
  - (2) If the principal amount of the new senior debt does not exceed the original principal amount of the senior debt being paid off, the Department may also allow reimbursement of costs the borrower incurred for capital improvements made in the twenty-four (24) months prior to the Restructuring, subject to documentation through a construction contract and/or receipts paid to unaffiliated businesses, and reimbursement of operating deficits that are documented by a third party audit and incurred within the 24 months prior to the Restructuring, and not reimbursed through reserve withdrawals or other sources.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560(d-g), Health and Safety Code.

## Section 107. Requirements for Senior Loans

- (a) Projects that are securing a new senior loan must demonstrate that they will have sufficient operating income to be able to support all required loan payments;
- (b) Senior loans are prohibited from including call option provisions allowing the call of the loan prior to maturity other than in case of default. Nor may Sponsor be required to remarket bonds prior to expiration of the senior loan;
- (c) All payments, lender fees, bond fees, issuer fees, trustee fees, and other fees, charges and costs, in addition to principal and interest payments, must be fully disclosed to and approved by the Department in the loan closing transaction summary and in the pro forma and operating budget; with any adjustments fully disclosed before loan closing;
- (d) Senior loans must have an interest rate cap on any interest rate that is not fixed for the full term. The interest rate at the cap must not jeopardize Fiscal Integrity, as determined by the Department;
- (e) Interest rate resets, renewals, and extensions of letter(s) of credit related to senior loans must not require the Sponsor to re-qualify pursuant to the senior lender's then-existing underwriting criteria;
- (f) Financial instruments on senior loans (including but not limited to, swaps, collars, rate caps, letters of credit, credit enhancement agreements, facility provider agreements, and interest rate hedges) must extend for the full term of the senior loan or must be renewable or extendable under terms and conditions acceptable to the Department;
- (g) The Department may deviate from the requirements of this section where it determines that the risk to Fiscal Integrity is low and financial market conditions do not allow the requirements to be met.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(g), Health and Safety Code.

## Section 108. Rent Restrictions for Assisted Units

- (a) If Special Rent Increases are not approved by the Department, annual Rent increases for Assisted Units shall be limited in accordance with the requirements of the Original Program.
- (b) Special Rent Increases may be allowed only if all of the requirements of this section are met:

- (1) The amount of the Special Rent Increase is the minimum amount necessary to support new debt, including construction financing, to pay for the rehabilitation;
- (2) The rehabilitation meets the requirements of Section 106(b);
- (3) The necessary rehabilitation is at a level that equals or exceeds the minimum per-unit rehabilitation cost standards under the low-income housing tax credit program. This minimum shall be calculated by averaging the amount applicable under TCAC regulations to competitive 9% tax credits (as specified for 2014 in Section 10325(f)(10) of the TCAC regulations) and the amount applicable to non-competitive 4% tax credits (as specified for 2014 in Section 10326(g)(7) of the TCAC regulations).
- (4) The Special Rent Increase shall not occur until the first regularly scheduled Rent increase after the closing of the Restructured loan and in compliance with the notice provisions to Existing Households, as set forth in subsection (c)(1)(A)(vi) and (c)(2)(A)(vi).
  - (A) Early Special Rent Increase exception. If Borrower (1) submits an application required by this subsection and (2) obtains a specific, Department approved plan to undertake a rehabilitation that meets the requirements of Section 106 of these Guidelines, the Department may approve the implementation of an Early Special Rent Increase up to five years prior to the expected closing of the Restructured loan subject to the following additional conditions:
    - (i) Borrower provides the Department with documentation including but not limited to: a letter of interest from a lender outlining their current terms applicable to projects of this nature, and detailing how they would size the loan based on operating income realized at the time of closing and thereafter,, a preliminary scope of work, a physical needs assessment prepared by a third party, a preliminary construction cost estimate prepared by a general contractor, a preliminary development budget, a sources and uses of funds, a preliminary title report, a multi-year pro forma, a proposed operating budget, a complete report showing all existing tenants by unit number, unit size, household incomes as reported in an income recertification performed in accordance with the requirements of the low-income housing tax credit program within the past three months, household size, current rent and subsidies and utility allowance, and date of annual rent increase, and any other documents the Department requires to evaluate the Project.

- (ii) Borrower provides a proposal listing the specific Special Rent Increases to be imposed on Existing Tenants and the specific adjustments to be made for vacant assisted and non-assisted units, clearly demonstrating that without implementation of the Early Special Rent Increase the Project will not comply with senior lender underwriting requirements. Borrower must make best efforts to identify, apply for and pursue any and all existing or eligible rent subsidies.
- (iii) The additional rental income collected as a result of the Early Special Rent Increase must be deposited with HCD or in a segregated account held by a third party, as selected by the Department. Funds from this account may only be used for rehabilitation expenses incurred after the closing of the Restructured loan, or, prior to that date, for urgently needed repairs that cannot be funded from the replacement reserve or operating income. If the planned rehabilitation fails to occur within five years of the recordation of the new Regulatory Agreement, the funds in this account may only be used as required by subsection (vi).
- (iv) Borrower will execute a new Regulatory Agreement and secure consents and subordination agreements from lenders and applicable third parties, including third party beneficiaries.
- (v) Borrower certifies compliance with relocation and other applicable laws.
- (vi) The Department approves a plan for use of the additional rental income collected for the most critical repairs and replacements and subsidizing tenant Rents should the planned rehabilitation fail to occur within five years of the execution of the new Regulatory Agreement. In addition, if the planned rehabilitation does not occur within the five year timeframe, Rents shall be reduced to the level that would have been permissible without a Special Rent Increase.
- (vii) Prior to the implementation of the Early Special Rent Increase, Borrower shall provide Existing Tenants with the following notifications of the Early Special Rent Increases:
  - (a) Notice six months prior to the scheduled Early Special Rent Increase with an estimate of the amount of the increase;

- (b) Notice 90 days prior to the actual Early Special Rent Increase with the exact amount of the new Rent.
    - (viii) Net Developer Fee shall not exceed 50 percent of the maximum otherwise allowed pursuant to Section 112(f).
  - (5) Borrower certifies that any necessary consent(s) from any appropriate third party beneficiaries have been obtained.
- (c) Special Rent Increases are limited as follows:
- (1) For Projects originally funded under RHCP-B and FHDP:
    - (A) For Existing Tenants: Special Rent Increases, including Early Special Rent Increases, shall be limited as follows:
      - (i) For Existing Tenants with incomes not exceeding 35 percent of area median income, as determined at the time of Department approval of the Restructuring, Special Rent Increases shall be limited to a maximum of 5 percent per year, until the Rents reach the levels specified in subsection 108(c)(1)(B) below;
      - (ii) For Existing Tenants with incomes exceeding 35 percent of area median income as determined at the time of Department approval of the Restructuring, Special Rent Increases shall be limited to a maximum of 10 percent per year, until the Rents reach the levels specified in subsection 108(c)(1)(B) below;
      - (iii) The amount of the Special Rent Increase shall not be greater than the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(h*i*);
      - (iv) Rent shall not exceed 50 percent of each Existing Tenant's actual Household Income, as determined at the time an application for restructuring is approved by the Department, until Rent reaches the lesser of 50 percent of each Existing Tenant's actual Household Income, as determined at the time an application for restructuring is approved by the Department, or the level applicable to the unit upon vacancy, as specified in subsection 108(c)(1)(B);

- (v) Once Rent reaches the lesser of the 50 percent of actual Household Income determined at the time the application for restructuring is approved or the level applicable to the unit upon vacancy, annual rent increases shall be limited based on increases in area median income, using the rules of the low income housing tax credit program. However, no annual rent increase under this subsection (c)(1)(A)(v) shall be implemented where the increase would result in Rent for an Existing Tenant exceeding 50 percent of actual Household Income, as determined through the most recent income certification;
  - (vi) The Borrower shall provide Existing Tenants with the following notifications of the Special Rent Increases:
    - (a) Notice six months prior to the scheduled Special Rent Increase with an estimate of the amount of the increase;
    - (b) Notice 90 days prior to the actual Special Rent Increase with the exact amount of the new Rent;
  - (vii) Notwithstanding the above, the Borrower shall comply with the requirements of the California Relocation Law, Government Code Section 7260 et seq., with regards to any rent increases to Existing Tenants who are temporarily displaced as the result of rehabilitation performed in connection with the Restructuring.
- (B) For vacant or vacated Units:
- (i) Rents shall be restricted at a maximum of 30 percent of 35 percent of area median income, calculated in accordance with the rules of the low-income housing tax credit program, for the number of Units designated in the Project's Original Program Regulatory Agreement as very low-income Units;
  - (ii) Rents may be increased up to a maximum of 30 percent of 60 percent of area median income, calculated in accordance with the rules of the low-income housing tax credit program, for the number of Units designated in the Project's Original Program Regulatory Agreement as lower-income Units;
  - (iii) Regulated Rents set forth in the unit mix shall not exceed the minimum amount necessary to ensure compliance with

Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(~~hi~~).

- (2) For Projects originally funded under SUHRP, DPRLP, CHRP-R, CALDAP, SERA, and FMTW:
- (A) For Existing Tenants: Special Rent Increases, including Early Special Rent Increases, shall be limited as follows:
- (i) For existing tenants with incomes not exceeding 35 percent of area median income, as determined at the time of Department approval of the Restructuring, Special Rent Increases shall be limited to a maximum of 5 percent per year, until the Rents reach the levels specified in subsection 108(c)(2)(B) below;
  - (ii) For existing tenants with incomes exceeding 35 percent of area median income as determined at the time of Department approval of the Restructuring, Special Rent Increases shall be limited to a maximum of 10 percent per year, until the Rents reach the levels set under subsection 108(c)(2)(B) below;
  - (iii) The amount of the Special Rent Increase shall not be greater than the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(~~hi~~);
  - (iv) Rent shall not exceed 50 percent of each Existing Tenant's actual Household Income determined at the time an application for Restructuring is approved by the Department, until Rent reaches the lesser of 50 percent of each Existing Tenant's actual Household Income, as determined at the time an application for Restructuring is approved by the Department, or the level applicable to the unit upon vacancy, as specified in subsection 108(c)(2)(B);
  - (v) Once Rent reaches the lesser of 50 percent of actual Household Income determined at the time the application for Restructuring is approved, or the level applicable to the unit upon vacancy, annual rent increases shall be limited based on increases in area median income, using the rules of the low income housing tax credit program. However, no annual Rent increase under this subsection (c)(2)(A)(v) shall be implemented where the increase would result in Rent for an

Existing Tenant exceeding 50 percent of actual Household Income, as determined through the most recent income certification;

- (vi) The Borrower shall provide Existing Tenants with the following notifications of the Special Rent Increases:
  - (a) Notice six months prior to the scheduled Special Rent Increase with an estimate of the amount of the increase;
  - (b) Notice 90 days prior to the actual Special Rent Increase with the exact amount of the new Rent;
- (vii) Notwithstanding the above, the Borrower shall comply with the requirements of the California Relocation Law, Government Code Section 7260 et seq., with regards to any rent increases to Existing Tenants who are temporarily displaced as the result of rehabilitation performed in connection with the Restructuring.

(B) For vacant or vacated Units:

- (i) Rents for at least 35 percent of Assisted Units, or as specified in the Original Program Regulatory Agreement, whichever is greater, shall be restricted to the midlevel target used by the Multifamily Housing Program. For purposes of this paragraph, “midlevel target used by the Multifamily Housing Program” shall mean either of the following:
  - (a) For counties with an area median income of 110 percent or less of state median income, it shall mean 30 percent of 30 percent of state median income, expressed as a percentage of area median income;
  - (b) For counties with an area median income that exceeds 110 percent of the state median income, it shall mean 30 percent of 35 percent of state median income, expressed as a percentage of area median income;
- (ii) Rents for the remainder of the Assisted Units may be increased up to a maximum of 30 percent of 60 percent of area median income;

- (iii) Regulated Rents shall not exceed the minimum amount necessary to ensure compliance with Section 112, projecting a positive cash flow for at least 20 years, instead of the 15 years specified in Section 8310(hi).
  - (C) The Rent Restrictions set forth in this subsection may require some Unit Rents to be decreased in order to comply with the Chapter 3.9 requirement for at least 35 percent of the Assisted Units to be restricted to the midlevel target of the MHP Program.
- (3) For Projects originally funded under RHCP-O:
  - (A) For Existing Tenants: Rents for tenants living in assisted units at the time of restructuring pursuant to this chapter may be increased to 30 percent of Household Income pursuant to Section 109(b), for as long as the Department continues to provide annuity payments, Rent for these tenants shall be the greater of 30% of Household Income or the “base rent” as defined under Section 7806 of the RHCP-O regulations. Upon termination of the annuity payments, any Special Rent Increases shall be limited in accordance with Section 108(c)(2)(A).
  - (B) For vacant or vacated Units, Rents shall be limited in accordance with Section 108(c)(2)(B).

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(b-e), Health and Safety Code.

#### Section 109 RHCP-O Annuity

- (a) Annuity payments provided under the RHCP-O program shall be continued only for low- or very low-income Existing Households who were occupying Assisted Units at the time of the Restructuring and only to the extent that funds are available to the Department for such payments and the Department determines that they are needed to preserve project feasibility.
- (b) In order to preserve the RHCP-O annuity funds for the greatest length of time possible, the Rent shall increase to 30 percent of Household Income upon the next income recertification after the closing of the Restructuring. Sponsor shall provide 90 days’ notice of the Rent increase to the Existing Households.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(h), Health and Safety Code.

#### Section 110. Reserved for Future Use

## Section 111. Application Process

- (a) The Sponsor shall submit an application for Restructuring on forms made available by the Department, including all required supporting documentation, including but not limited to: a third party physical needs assessment and replacement reserve study, scope of work, development budget, sources and uses of funds, relocation plan, a preliminary title report, loan documents from proposed junior and senior lenders and all other sources of funds (as they become available), a complete report showing all existing tenants by unit number, unit size, household incomes as reported in an income recertification performed in accordance with the requirements of the low-income housing tax credit program within the past three months, household size, current rent and subsidies and utility allowance, and date of annual rent increase, proposed operating budget, 15-year pro forma, and any other documents the Department requires to evaluate the Project;
- (b) An application shall be deemed complete when the Department is able to review the application and assess whether the project complies with Section 50560, 50561, and 50562 of the Health and Safety Code and these guidelines;
- (c) Depending on the volume of applications and the complexity of the requested Restructurings, the Department will set minimum processing times for approval of the Restructurings and will post these on the Department's website;
- (d) In order for the Department to complete a Restructuring under these guidelines in a timely manner prior to the maturity date of the Original Program loan, the Sponsor must submit a complete application to the Department no later than six months before the maturity date of the Original Program promissory note. If an application is submitted to the Department less than six months before the maturity date, the late submission is not a bar to Restructuring under these guidelines;
- (e) The Department will use available documentation contained in its files or any other source to determine the accuracy and reasonableness of information contained in the application;
- (f) Prior to closing the transaction, the current Sponsor or new Sponsor, as applicable, shall submit additional information, documents, instruments and certifications as deemed necessary by the Department.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560, 50561, Health and Safety Code.

## Section 112. Underwriting Requirements

The underwriting requirements for Sponsors of Projects requesting a Restructuring shall be those contained in the Uniform Multifamily Regulations, set forth in 25 CCR Section 8301, 8308, 8309, 8310, 8311, 8312 and to 8314, except for the following:

- (a) New replacement reserve deposit requirements shall be based on a third party physical needs assessment and replacement reserve analysis projecting the replacement costs, adjusted for inflation, over 20 years of operations;
- (b) Commercial vacancy assumptions shall be based on the operating history, including current leases and master leases, of the Project;
- (c) Operating expenses shall be based on actual operating history of the project, as evidenced by annual reports and audits, as well as the minimum expense requirements stated in CCR title 4, Division 17, Chapter 1, Section 10327. Operating expenses shall be adjusted to reflect improvements that are being made through the rehabilitation, which may reduce operating expenses;
- (d) There is no maximum debt service coverage ratio for Projects that do not request a Special Rent Increase. For Projects that do request Special Rent Increases, the debt service coverage ratio must comply with the UMRs. At its sole discretion, the Department may allow an exception, but only where necessary to meet a reasonable requirement of another funding source;
- (e) Where a Project is receiving project-based rental or operating assistance that is terminated by the subsidy provider, Rents for Assisted Units previously covered by this assistance, and that are restricted pursuant to Section 108 to a level below 30 percent of 50 percent of area median income, may be increased above the levels stipulated in Section 108, but only to the minimum extent required for Fiscal Integrity, as determined by the Department, and in no event exceeding 30 percent of 50 percent of area median income;
- (f) Net developer Fee shall not exceed the amount that may be included in basis under the Low-Income Housing Tax Credit Program 9 percent tax credit rules if a Special Rent Increase is requested. If a Special Rent Increase is not requested, the developer fee is not limited by these Guidelines but must comply with limitations imposed by other funding sources;
- (g) Balloon payments are prohibited unless the Project demonstrates, to the Department's satisfaction, that it will have sufficient operating income, and income obtained through refinancing or other means, to be able to pay off the balloon payment;
- (h) Except as noted in this subsection, Project sales shall not involve a cash payment to the selling party, or to any party related to or affiliated with the selling

party. The Sponsor may not cash out their equity. The exception to this rule applies to cases where a cash payment to the seller is held in a restricted account, is contributed to the project during the development period, and remains with the project as permanent funding. In addition, any Sponsor loans related to the Restructuring, including carryback financing, shall be payable only out of sponsor distributions.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(g), Health and Safety Code.

### Section 113. Department Fees

- (a) If a Restructuring involves an extension of the Department's loan or loans, the Department shall charge a monitoring fee to cover its monitoring costs for the period of the extension. This fee may be paid annually or through a single payment made at the time of the Restructuring. The fee may also be waived or deferred by the Department, in accordance with the provisions of subsection (f) below. If the Department has more than one loan on a single project, it shall charge only one fee.
- (b) If the monitoring fee is paid annually, the first annual payment shall be due on the last day of the Project fiscal year immediately following the maturity date of the Original Program loan. The amount of the payment for 2014 shall be \$5,000 for projects with 12 or fewer units, \$10,000 for projects with 13 to 60 units, and \$15,000 for projects with over 60 units. To cover inflation, these amounts shall be increased by each year beyond 2014 in accordance with changes in the CPI (as defined in Section 8301 of the Uniform Multifamily Regulations), unless the Department determines that its monitoring costs are increasing at a lower rate. The Department shall conduct an assessment of its costs no later than 2020.
- (c) If making the monitoring fee a required payment negatively impacts the amount of supportable senior debt with required payments, the Department may allow it to be payable "below the line," to the extent that the project generates sufficient cash flow, with 100% of cash flow available after payment of operating expenses and required reserve deposits applied towards the HCD monitoring fee, until it is fully paid (with deferred developer fees, asset and partnership management fees, and all other sponsor fees (other than for property management) payable after the HCD monitoring fee is paid in full).
- (d) If the monitoring fee is paid through a single payment at the time of Restructuring, from development sources or other funds, the amount shall equal the net present value of the payments that would have been made if the fee was paid annually, as described in subsection (b), using a discount rate of 2.18 percent, which is the average State Money Investment Fund ("SMIF") Apportionment Rate for the period from 2002 through 2012. The Department may

adjust this rate every five years to reflect average SMIF rates over the most recent 10 year period.

- (e) Not sooner than fifteen years following a Restructuring, the Department may adjust the amount of the monitoring fee that is paid on an annual basis to more closely match its costs. If necessary, for project feasibility, the Department may set the time of the adjustment to be up to 18 years from the date of the Restructuring.
- (f) The Department may defer or waive some or all monitoring fees, for projects meeting all of the following requirements:
  - (1) They have no term debt with required payments;
  - (2) Net Developer Fee is less than 50% of the maximum allowable amount for projects requesting Special Rent Increases, as calculated pursuant to subsection 112(f); and
  - (3) Without the deferral or waiver of the monitoring fees, the project would not meet the underwriting requirements specified in Section 112.
- (g) The Department may also defer or waive some or all monitoring fees for Projects requesting only loan extensions where Sponsor contributions are required to project positive cash flow for 15 years.
- (h) For the projects identified in subsections (f) or (g), the Department may make payment of its monitoring fee a “below the line” expense, payable to the extent that the project generates sufficient cash flow. In this case, cash flow available after payment of operating expenses and required reserve deposits shall be applied:
  - (1) First, towards the Department’s monitoring fee, up to 50% of the total fee amount, then
  - (2) Second, 50% towards the Department’s monitoring fee, until it is fully paid, and 50% towards deferred developer fees, asset and partnership management fees, and any other sponsor fees that would otherwise be paid on a priority basis (other than for property management), then
  - (3) Split in accordance with the otherwise applicable cashflow waterfall.
- (i) To cover the Department’s costs of processing Restructuring transactions, the Department shall charge non-refundable fees as follows:
  - (1) \$1,000 payable upon submission of the initial application.

- (2) \$9,000 payable prior to recordation of any regulatory agreement authorizing an Early Special Rent Increase.
- (3) \$4,000 payable upon closing of a Restructuring transaction limited to the extension of a Department loan or loans.
- (4) \$39,000 payable upon closing of a Restructuring transaction involving refinancing of senior debt, syndication, or both, with or without an extension of the Department's loan or loans.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(a), Health and Safety Code.

#### Section 114. Use of Operating Cash Flow

- (a) The new Department loan documents recorded as part of the Restructuring will require operating cash flow to comply with Section 8314 of the Uniform Multifamily Regulations, except as set forth in subsection (b) and (c) and Section 113(h);
- (b) Residual receipts payments that are required to be paid to the Department shall be structured to avoid a reduction in the amount of residual receipt loan payments made to local public agencies due solely to the change in payment terms on the Department's loan, or as a result of previously separate sites being combined into one project. In the event that the pro forma shows that there will be a reduction in the amount of local public agencies' loan payments from residual receipts solely due to the change in the Department's loan terms or the combination of sites into one project, the Department's Regulatory Agreement shall provide for a specified amount of residual receipts to be paid to the local public agency, as long as there is sufficient cash flow for that amount to be paid each year;
- (c) Any income from commercial space shall be included with residential income (including non-assisted unit income) for purposes of calculating uses of operating cash flow.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50561(g), Health and Safety Code.

#### Section 115. On-going Management Requirements

The Department shall require submission of information to comply with Section 50561(i) of Chapter 3.9. With the exceptions noted elsewhere in these guidelines, the following MHP and Uniform Multifamily Regulation sections are incorporated by reference into these guidelines and shall apply to each project after Restructuring:

- (a) The following Uniform Multifamily Regulations:
  - (1) Section 8305, Tenant Selection;
  - (2) Section 8306, Tenant Recertification;
  - (3) Section 8307, Rental Agreement and Grievance Procedure;
  - (4) Section 8308, Operating Reserves;
  - (5) Section 8309, Replacement Reserves;
  
- (b) The following MHP Regulations:
  - (1) Section 7312(a), (c) and (e), Rent Standards;
  - (2) Section 7323, Defaults and Loan Cancellations with the exception of subdivisions (c) and (d);
  - (3) Section 7324, Management and Maintenance;
  - (4) Section 7325, Reporting;
  - (5) Section 7326, Operating Budget.

NOTE: Authority cited: Section 50560(h), Health and Safety Code. Reference: Section 50560, 50561, 50562, Health and Safety Code.