# Welcome to the 2017 Uniform Multifamily Regulations Overview Webinar

California Department of Housing and Community Development

November 28, 2017

**This webinar is a listening session only (muted audience), however we will accept your questions via the chat box feature, and answer them between sections.**

**We will read your questions out loud and provide answers when you see the "Questions?" slides.**

**Please set your computer on "Notes to all Presenters" and send your questions to the presenter via the chat box feature.**

**This webinar will be posted to the HCD website for future download and listening.**

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# 2017 Uniform Multifamily Regulations (UMR)

# What are the Uniform Multifamily Regulations?

- The UMRs regulate multifamily housing project loan/grants funded by the Department of Housing and Community Development (Department) through Notices of Funding Availability beginning in 8/15/03. The UMRs regulate:
  - Ownership structure
  - Financial feasibility analysis/underwriting
  - Project management and operations

# The UMRs apply to:

- Multifamily Housing Programs (MHP and family)
- State-administered portion of the Home Investment Partnerships Program (HOME)
- Joe Serna, Jr. Farm Worker Housing Grant Program (JSJFWHG)
- Other Departmental multifamily housing programs (as referenced in certain sections of each program’s individual regulations and/or guidelines)

# Why revise the UMRs?

- Since minor revisions in 2010, the UMRs have not remained reflective of actual market conditions

- The revisions now align with current market conditions, and changes in regulations & policies at HCD and from our partner agencies:

    - California Tax Credit Allocation Committee (TCAC)
    - California Debt Limit Allocation Committee (CDLAC)
    - California Housing Finance Agency (CalHFA)

# Uniform Multifamily Regulations (UMR)

- After extensive stakeholder outreach, including three public hearings and three comment periods in 2016, the Department first submitted the revised UMRs to the Office of Administrative Law (OAL) in January of 2017.
- To address OAL issues and concerns, the Department held another 15-Day public hearing and resubmitted to OAL on 9/27/17.
- On 11/8/17, OAL approved the UMRs and a 11/15/17 effective date.
- The 2017 UMRs and implementation materials are now available on the Department's website.

# Changes to the UMRs

You can view a full copy of the new
2017 UMRs on our Uniform Multifamily Regulations webpage at
hcd.ca.gov

# Major Changes

- Adds flexibility to underwriting standards for debt-service coverage ratios
- Relaxes prohibitions to balloon payment loans by allowing exceptions
- Allows “sandwich loans,” provided that the Department’s affordability provisions are senior to the senior loan and survive foreclosure
- Increases allowable Developer Fees and Asset Management/Partnership Management Fees

# Major Changes

- Changes Operating and Replacement Reserve requirements
- Clarifies provisions for Scattered Site Projects
- Allows Supportive Services Costs as eligible operating expenses (within described limits)
- Establishes regulations to include Tribal Lands

# §8300 Purpose and Scope

§8300(c)

- Allows the 2017 UMRs to apply to Projects having a Standard Agreement signed or amended after 11/15/2017
- Note: The 2017 UMRs may also apply upon a Project closing a Restructuring Transactions per §8317

# §8301 Definitions

- (e) Allows reserves to cover operating deficits
- (h) Distributions include withdrawal of reserve funds that are not approved by the Department as project costs
- (j) Defines and includes Native American Lands
- (k) Allows for supportive services costs to be included as Operating Expenses

# §8301 Definitions

- (l) Operating income now includes rental income from commercial use (as well as Commercial Space); and excludes cash contributed by the Sponsor, and payments to the Sponsor for supportive services not included in the Department approved operating budget
- (t) and (u) define Supportive Services and Supportive Services Costs

# §8302 Restrictions on Demolition

- (b) The Department may approve a reduction in the number of units to substantially improve livability or serve a compelling public policy objective
  - Example: Reducing Single Room Occupancy units to create efficiency studio units

# §8303 Site Control Requirements and Scattered Site Projects

Similar to Loan Portfolio Restructuring Program Guidelines (though some program restrictions may apply):

- Single owner and property manager
- At most one senior lender (debt and associated security instruments must be the same for all sites)
- Single rent schedule, audit and annual report covering all sites
- The Department must be secured against all sites
- The Department named on insurance for all sites

# §8305 Tenant Selection

- Requires local residency preferences to comply with fair housing law
- Allows tenant selection process to use a Coordinated Entry System (per 24 CFR 578)
- Provides exceptions to minimum occupancy standards
- The Department may approve exceptions based on the unique legal requirements applicable to Native American Lands

# §8307 Rental Agreement and Grievance Procedure

- (e) The Department may approve exemptions based on the unique legal requirements applicable to Native American Lands
- All other subsections of 8307 remain the same

# Questions?

# §8308 Operating Reserves

Allows Operating Reserve to defray operating shortfalls resulting from Department approved Operating Expenses exceeding Operating Income beyond rent-up period

- (c) adds flexibility for the required replenishing of reserves
- (d) the Department *shall* reduce required minimum balances if two fiscal/operational minimums are met
- (e) adds flexibility for federally assisted projects
- (g) clarifies that Department required operating reserves <u>cannot</u> be used for partnership exit costs

# §8309 Replacement Reserves

Clarifies the purpose of the replacement reserve:

- To repair or replace failed or damaged capital items
- To cover extraordinary maintenance expenses too costly to fund from operating budget.
- Prohibits use for limited partner exit costs.
- (b) expands funding sources to include Operating Income, development sources, or combination of the two

# §8309 Replacement Reserve Deposit

- (b)(1) Adjusts annual deposit amount to at least the lesser of 0.6% of construction costs or $500 per-unit-per-year for new construction and conversion projects
- However the Department may approve a different amount based on third-party 20-year reserve analysis
- (b)(2) For rehab projects, reserves based on third-party 20-year Property Condition Assessment (PCA), or $500 per-unit-per-year if no PCA available
- (b)(4) Incorporates Native American Housing Assistance and Self Determination Act programs
- (b)(5) Addresses PCA and reserve analysis requirements

# Questions?

# §8310 Underwriting Standards

- (b) adds flexibility to Commercial Space vacancy rate assumptions
- (e) adds flexibility to first year Debt Service Coverage Ratio requirements:
  - The 1.20:1 cap can be exceeded if necessary to meet any of four exceptions in §8310(e), including to project positive cash flow for 20 years
  - Less than 1.10:1 minimum can be waived if project receives subsidies

# §8310 Underwriting Standards

- (f) Relaxes the prohibition against senior debt balloon payments, provided the Department's regulatory agreement is recorded senior to the balloon loan, and the Department's Affordability Provisions survive foreclosure.
    - Provides for survival of Affordability Provisions in the event project-based rental assistance is terminated.
- (k) Local public agency loans shall not have required payments exceeding 0.5% per year of the original principal loan amount

# §8311 Limits on Development Costs

- (a) Establishes development cost containment standards
- (b) Establishes scoring penalties for violations of cost containment standards, which may be assessed on any application to any Department NOFA for up to three years

# Questions?

# §8312 Developer Fees

- (a) updates Developer Fee limits
- (b) aligns Department's limits with TCAC's 9% Program
- (c) updates Developer Fee limits for projects that are also using TCAC's 4% Program
- (e) allows for re-evaluation of fees for future work (ie: at time of future resyndications)
- (f) HCD may defer to developer fee limits of other public agency lenders on projects where less than 25% of the total units are counted in determining maximum HCD loan or grant amount

# §8312 Developer Fees

For projects <u>not</u> utilizing Low Income Housing Tax Credits (LIHTC), if projects meet certain construction cost requirements, developer fees are increased to the following:

- New Construction or Acquisition/Rehabilitation Construction budget = or greater than $35,000 per unit:

  $26,000 per unit for first 30 units, and

  $10,500 per unit in excess of 30.
- Acquisition and Rehabilitation = or greater than $10,500 and less than $35,000 per unit:

  $12,000 per unit for first 30 units

  $5,500 per unit in excess of 30 units
- All other Projects = $2,000 per unit
- Annual CPI-based formula may increase fees if next $1,000 increment has been reached, per 8312(a).

# §8312 Developer Fees

For projects utilizing LIHTCs:

- For 9% projects, developer fees cannot exceed the amount that may be included in project costs pursuant to CCR, Title 4, Section 10327.
- For 4% projects, developer fees shall not exceed the lesser of $3,500,000 or an amount per the formula stated in §8312(c).

# Questions?

# §8313 Program Compatibility

- (a) Adds flexibility if federal funding requirements conflict:

  “Where the requirements of federal funding (including low income housing tax credits and direct federal loans but excluding federal loan guarantees) would cause a violation of the requirements of these regulations, the Department may modify these requirements as minimally necessary to ensure program compatibility.”

# §8313.1 Funding Source Surpluses

- (a)(1-3) establishes processes when funding source surpluses are realized

# §8313.2 Special Purpose Entity(ies)

- (a)(1-3) clarifies the conditions when special purpose entities can be formed when borrowing Department funds, and certain Sponsor liabilities
- (a)(3) Allows no more than 4 levels of ownership entities:
  - Sponsor must provide evidence satisfactory to the Department it has direct control of the entity that performs the four substantial management duties on behalf of the special purpose (ownership) entity

# 8313.2 Special Purpose Entity(ies)

Example of
4 Ownership
Levels

**ABC Apts, LP, a California limited partnership**
**– the Borrower / Owner**

**ABC Apts Partners, LLC, a California limited liability company**
**– the General Partner of the limited partnership**

**ABC Apts Associates Corp., a California corporation**
**– the Sole Member & Manager of the LLC**

**ABC Apts Mothership, a California nonprofit public benefit corporation**
**– controls ABC Apts Associates Corp., and**
**is the SPONSOR**

# Questions?

# §8314 Use of Operating Cash Flow

- (a) updates the order and eligible amounts of payable fees from Operating Income remaining after operating expenses, debt and reserve deposits. NOTE: deferred developer fees are paid prior to asset management/partnership management fees

- (c) amounts paid for developer fees and asset management/partnership management fees are not limited if made from Borrower's Distributions

- (d) requires Department approval of required annual budget and annual report (with audit) before payment of any Distributions, developer fee or asset management/ partnership management fees

- (e) establishes supportive services cost limits and annual increases

- (f) (g) and (h) establishes supportive services admin limits; establishes recordkeeping requirements; and authorizes reserves for services and case management

  - NOTE: deletion of previous subsection (d) means all Commercial Income now subject to standard project cash flow calculations

# §8314 Use of Operating Cash Flow:

## Supportive Services Costs as Operating Expenses

Supportive Services Costs are eligible Operating Expenses at levels noted below, subject to HCD verification of population served and number of units restricted, and allows for inflation at 2.5% per year.

- $4,080 PUPY for units restricted to persons/families experiencing Chronic Homelessness.
- $3,060 PUPY for units not restricted to persons/families experiencing Chronic Homelessness, and units restricted for Special Needs Populations.
- $1,051 PUPY for units with dedicated supportive housing services providers and tracking system.
- $250 PUPY for “other” units who don’t meet the requirements above.

Other Supportive Services Costs (staff supervision and admin overhead) paid as Operating Expenses have defined limits (§8314(f)).

# §8314 Use of Operating Cash Flow:
## Asset Management Fee Limit

Standardizes limits (ends deferral to localities):

- Increases amount to $30K per year (as of 2016); $31,050 for 2017; $32,136 for 2018
- Adjusts for inflation at 3.5% per year
- Allows asset management/partnership management fees to accrue no more than three years following the year they are earned
- Includes payments of “asset management, partnership management, and similar fees, <u>including fees paid to investors</u>.”

# Questions?

# §8315 Subordination Policy
## Including Senior Hard Debt & "Sandwich Loans"

- (b) adds Department subordination policy flexibility when localities invest and manage affordable units
- (d) defines subordination requirements for lender/ownership affiliations:
  - The Department will not subordinate to a senior lender that has an interest in the ownership entity, unless a covenant, regulatory agreement or similar instrument is recorded senior to the lender's document – that includes the Department's Affordability Provisions that survive foreclosure.

# §8315 Subordination Policy
## Senior Hard Debt / "Sandwich Loans"

§8315(d): The Department will not subordinate to a senior lender that has an interest in the ownership entity, unless a covenant, regulatory agreement or similar instrument is recorded senior to the lender's document – that includes Department Affordability Provisions that survive foreclosure

# §8316 Leasehold Security

- (b) provides that HCD regulatory agreement be recorded against the fee estate if there are other mortgages or regulatory agreements recorded against the fee
  - Waiver of this subsection if local governmental assistance to the project is more than HCD's and the local government entity manages a portfolio of their own loans covering over 10,000 units
- (d) allows waiver flexibility for public agencies and Native American Lands

# §8317 Transaction Fees

- Allows the Department to recoup defined costs for processing Restructuring Transactions

# §8318 Federal Loan Extensions

- Allows the Department to extend the term of existing federal loans, if allowed by the subject federal statute
- Such extensions shall be minimum of 10 years and maximum of 55 years

# Questions?

# UMR Applicability and Project Eligibility

# New Project
# Loans or Grants

- If you are applying for funding, or recently awarded program funds and not yet signed your Standard Agreement, the 2017 UMRs apply to your project
- The 2017 UMRs apply to all loan funding documents including the promissory note, deed of trust and regulatory agreement
- The 2017 UMRs will also apply to grant lien and security agreements

# New Project
# Loans or Grants

- If you have already signed a Standard Agreement but your HCD loan is not closed, you are still eligible for the 2017 UMRs subject to Department approval
  - You must amend your Standard Agreement prior to closing the permanent Department loan/grant, and
  - Sign the Regulatory Agreement and other loan documents that reference the 2017 UMRs prior to closing the Department loan/grant
    - If you've already reviewed the HCD loan documents, you will need to re-review in order to approve the new language

# Existing Projects with Open Standard Agreements

- If you have existing Department permanent loan funding or grant funds and have an open Standard Agreement, you are eligible for the 2017 UMRs, subject to Department approval

  - You must amend your Standard Agreement, and

  - Amend the Regulatory Agreement and other loan/grant documentation

# Existing Projects with Expired Standard Agreements

- If you have existing Department permanent loan funding or grant funds, but your Standard Agreement has expired, the 2017 UMRs apply under any one of the four following conditions:

    1. Extending your current Department loan
    2. Changing ownership (non-related Seller/Buyer)
    3. If the Department subordinates to a Senior Lender
    4. Re-syndication of Tax Credits

- A full application and underwriting approval process will be conducted by HCD's Transactions Unit

# Questions?

**Visit our website at hcd.ca.gov for more details, or call your Department Representative at the number provided on the website.**

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