Joe Serna, Jr. Farmworker Housing Grant Program – Multifamily

 Public Comment Draft Guidelines

AB 434 (Chapter 192, Statutes 2020)

To ease in review, language identified in red text throughout this document represents text that is consistent across all multifamily funding programs subject to AB 434.

Please refer to the Department’s [AB 434 website](https://www.hcd.ca.gov/grants-funding/ab434.shtml) for copies of all AB 434 Designated Program draft guidelines and applicable appendices

California Department of Housing and Community Development

2020 West El Camino Avenue, Suite 500 Sacramento, CA 95833

Website: [Joe Serna Jr., Farmworker Housing Grant Program](https://hcd.ca.gov/grants-funding/active-funding/fwhg.shtml)

Email: serna@hcd.ca.gov

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**Joe Serna, Jr. Farmworker Housing Grant (FWHG) Program Guidelines**

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# Article 1. General.

## Section 101. Purpose and Scope.

1. These guidelines (the “Guidelines”) implement and interpret Health and Safety Code (“HSC”) Chapter 3.2 (commencing with Section 50515.2), Part 2, Division 31, which establishes the Joe Serna, Jr. Farmworker Housing Grant Program (the “Program” or “FWHG”) administered by the California Department of Housing and Community Development (the “Department”).
	1. These guidelines apply only to Rental Housing Developments. Single-family development uses with be governed under a separate set of program guidelines.
2. These guidelines implement and interpret AB 434 (Chapter 192, statutes 2020), which amends, repeals and adds HSC Section 50675.1 and 50675.7, along with various statutes related to the Designated Programs. AB 434 requires the Department to harmonize the Designated Programs with MHP in four (4) respects: The Department is to make Designated Program funds available at the same time as it makes any MHP funds available; it is to rate and rank Designated Program applications in a manner consistent with MHP applications; it is to administer Designated Program funds consistent with MHP; and, to the extent applicable, it is to make the terms of any Designated Program loan consistent with MHP loan terms.
3. Pursuant to Assembly Bill 101 (2019-2020 Reg. Sess.), Chapter 159, signed into law on July 31, 2019, the matching share requirement of the Program is no longer required.
4. Program funding is prohibited for use in housing H-2A workers, see Assembly Bill 1783 (2019-2020, Reg. Sess.), as modified by Assembly Bill 107 (2019-2020, Reg. Sess.). See HSC Section 50517.10.

## Section 102. Uniform Multifamily Regulations

1. The Uniform Multifamily Regulations (UMRs) (Cal. Code Regs., tit. 25, § 8300 et seq), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference.
2. In the event of a conflict between the provisions of the UMRs and these guidelines, the provisions of these guidelines shall prevail.

## Section 103. Definitions.

All capitalized terms used throughout these guidelines which are not defined below shall, unless their context suggests otherwise, be given the same meanings of terms as defined in the Multifamily Housing Program Guidelines (see Appendix B for a list of these defined terms) or as ascribed in the UMRs (Chapter 7, Subchapter 19, Section 8301).

In the event of a conflict between the following definitions and those cited above, the following definitions prevail for the purposes of these guidelines. The defined terms will be capitalized as they appear in the guideline text. References to sections herein refer to sections of these guidelines unless otherwise noted.

1. “Agricultural Employment” means employed in the cultivation and tillage of the soil; the production, cultivation, growing and harvesting of any agricultural or horticultural commodities; the raising of livestock, bees, furbearing animals, or poultry; dairying, forestry, and lumbering operations; and any work on a farm as incident to or in conjunction with such farming operations, including the delivery and preparation of commodities for market or storage.
2. "Agricultural Household" means an Agricultural Worker or workers and other persons who reside or will reside with an Agricultural Worker in an Assisted Unit.
3. “Agricultural Worker” means an individual who derives, or prior to retirement or disability derived, a substantial portion of his/her income from Agricultural Employment.
4. "Assisted Unit" means a housing Unit that is subject to Program Rent and/or occupancy restrictions as a result of financial assistance provided under the Program.
5. "Designated Programs" means Veterans Housing and Homelessness Prevention Program (VHHP), Transit Oriented Development Housing Program (TOD), Joe Serna, Jr. Farmworker Housing Grant (FWHG or Serna), Infill Infrastructure Grant Programs (IIG (2007), IIG (2019)), and Housing for a Health California (HHC) to the extent that AB 434 requires that funds from such programs be made available at the same time as funds are made available under the MHP Program, that the applications for funding under such programs are to be rated and ranked in a manner consistent with the MHP Program and that that the administration of funds made available under such programs shall be consistent with the MHP Program.
6. "Fund" means the Joe Serna, Jr. Farmworker Housing Grant Fund.
7. "Limited Partnership” means a Limited Partnership as defined in Section 171.5 of the Corporations Code and in which all of the general partners are either nonprofit public benefit corporations, Limited Liability Companies, or a combination of nonprofit public benefit corporations and Limited Liability Companies. Limited Partnership eligibility requirements are specified in Section 210 below.
8. “Limited Liability Company” means a limited liability company where all the members are nonprofit public benefit corporations. Limited Liability Company eligibility requirements are specified in Section 210 below.
9. "Program” means the Joe Serna, Jr. Farmworker Housing Grant Program.
10. "Related Support Facilities" include but are not limited to:

(1) water and sewer facilities and other utilities directly related to the proposed Rental Housing Development.

(2) physical improvements for childcare services, recreational activities, meeting room(s) all of which are intended for use of Project residents.

(3) solar and other alternative energy efficient systems.

1. “Rural Development" or "RD" means the United States Department of Agriculture acting through the Rural Housing Service, formerly known as the Farmers Home Administration.
2. “Target Population” has the same meaning as Agricultural Worker.

# Article 2. Administration of Funds.

## Section 201. Eligible Project.

Proposed Projects are eligible for funding only if:

* 1. The Project includes the new construction or Rehabilitation of a Rental Housing Development or conversion of a nonresidential structure to a Rental Housing Development;
1. For purposes of calculating Program loan amounts and for the purpose of determining compliance with Program requirements that a Rental Housing Development contain five or more Units, a single-family house is considered to be one Unit, and an apartment Unit in an apartment building is considered to be one Unit regardless of the number of bedrooms within the apartment Unit;
	1. Other development funding sources, including all tax credit equity generated by the Project, are insufficient to cover Project development costs;
	2. At the time of the application due date, the construction or Rehabilitation work has not commenced, except for emergency repairs to existing structures required to eliminate hazards or threats to health and safety;
	3. Projects must meet the accessibility requirements specified in the TCAC regulations, as may be amended and renumbered from time to time, including those of CCR, Title 4, Section 10325(f)(7)(K) and, for senior Projects, those of Section 10325(g)(2)(B) and (C). Exemption requests, as provided for in the TCAC regulations, must be approved by the Department. Projects must also provide a preference for accessible units to persons with disabilities requiring the features of the accessible units in accordance with Section 10337(b)(2) of the TCAC regulations;
2. Program funds may only be expended for Rental Housing Developments that meet the following criteria:
3. The Rental Housing Development must contain Assisted Units to be occupied by Agricultural Workers.
4. When Program funds amount to less than twenty-five percent (25%) of the total development/Rehabilitation cost or value of a Project, whichever is applicable, for every one percent (1%) of the total development/Rehabilitation cost or value which Program funds constitute, a minimum of two percent (2%) of the total number of units of the Rental Housing Development shall be designated as Assisted Units restricted to occupancy by Agricultural Workers.
5. When the Funds amount to twenty five percent (25%) or more of the total development/Rehabilitation cost or value of a Rental Housing Development, the number of Assisted Units restricted to occupancy by Agricultural Workers shall be directly proportional to the percentage of Program Funds awarded to the total development/Rehabilitation costs, but not less than fifty percent (50%) of the total number of units in the Rental Housing Development.
6. To the greatest extent possible consistent with Fiscal Integrity, at least ten percent (10%) of the Assisted Units shall be reserved for Agricultural Workers with incomes no greater than thirty percent (30%) of area median income (AMI). These units shall be distributed reasonably among bedroom sizes. The remaining ninety percent (90%) of Assisted Units shall be reserved for Agricultural Workers with incomes no greater than 80% of AMI.
7. To the greatest extent possible, any non-assisted units are to be occupied by Agricultural Workers.

To the “greatest extent possible” as used in these Guidelines, means that the Awardee must exercise due diligence as a fiduciary to the Project, to meet Program requirements and objectives. For example, to the extent there are two otherwise equally qualified tenants on a waitlist and one is an Agricultural Worker, the Agricultural Worker gets the unit.

1. Assisted units in a Rental Housing Development required to be made available to lower-income households pursuant to MHP Guidelines Section 7213 are to be made available at affordable rents as defined in [HSC Section 50053](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=50053&lawCode=HSC).
2. Rent limits for initial occupancy and for each subsequent tenancy by a new eligible household shall apply to all Assisted Units in accordance with subdivision (b) of HSC Section [50053](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=50053&lawCode=HSC).
3. In the event that the Agricultural Worker population in a Rental Housing Development falls below the minimum number required to occupy the Rental Housing Development either through change of status or by persons leaving the development, the Awardee shall implement an affirmative marketing plan which will recruit other Agricultural Workers as units become available until the minimum number is once again in occupancy.
4. Assisted Unit Requirements
	1. Where multiple Department programs assist the Project and the jurisdiction does not have Article XXXIV authority, the Department’s total non-VHHP regulatory authority shall not exceed 49 percent of the Project’s total units, unless the project otherwise has an exemption.
	2. In jurisdictions having Article XXXIV authority, the Department’s total regulatory authority shall not exceed the allocation of authority, up to 100 percent of the Project’s total units.
	3. The units regulated by the Department, including FWHG Assisted Units, shall include those with the lowest income limits.
5. Projects proposed by Tribal Entities must meet the following requirements:
	1. Projects satisfy one of the following:
		1. Located in Indian country as defined by 18 USC 1151 or located on fee land; and
		2. Occupancy will be legally limited to tribal households, except that up to 20% of Low-Income Units may serve non-tribal households if required by the HOME Program.
	2. The applicant meets the following conditions of award funding (which conditions are not, however, conditions to engaging in the competitive award process) as and to the extent applicable and set forth in a Standard Agreement:
		1. BIA Consent. The Bureau of Indian Affairs (BIA) has consented to Sponsor’s execution and recordation (as applicable) of all Department-required documents that are subject to 25 CFR sec. 152.34 or 25 CFR sec. 162.12, prior to award disbursement.
		2. Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.
		3. Title Insurance. The Department has received title insurance for the property underlying the Project that is satisfactory to the Department. Notwithstanding the foregoing sentence, upon a showing of good cause, for Applicants unable to provide a conventional title insurance policy satisfactory to the Department, this condition may be satisfied by a title status report issued by the BIA Land Title and Records Office and pursuant to a title opinion letter issued for the benefit of the Department but paid for by the Sponsor.
		4. Recordation Requirements. Where recordation of instruments is a condition of award funding or otherwise required under or pursuant to the Standard Agreement, the subject instrument is recorded with the Land Titles and Records Office at the BIA or in the appropriate official records of the County in which the Project property is located, as may be applicable.
6. Multiple Department Funding Sources

Use of multiple Department funding sources on the same Assisted Units is permitted, subject to the following limitation:

* 1. No more than $35,000,000 in Department Funding Sources may be used on a single Project. Per unit loan limits shall be determined in a NOFA. Total Department funding, including FWHG, shall not exceed 75% of the total development cost. In a SuperNOFA, each Sponsor is limited to no more than $70,000,000.
	2. Funding limits set forth in subsection (1) shall not include Department funds awarded for purposes other than capital improvements, such as loans or grants for non-housing related infrastructure, transit amenities, programs, or rental and operating subsidies.
	3. “Department Funding Sources” shall mean loan or grant funds awarded for permanent funding of multifamily development costs (which shall not include funds specifically designated for capitalized operating or operating subsidy reserves) under the following programs:
		1. Supportive Housing Multifamily Housing Program;
		2. Multifamily Housing Program;
		3. Veterans Housing and Homelessness Prevention program;
		4. No Place Like Home Program, including funds awarded either by the Department or an Alternative Process County, but not grants or loans for capitalized operating subsidy reserves;
		5. Affordable Housing and Sustainable Communities (AHSC) Program - Affordable Housing Development loans, but not grants for Housing Related Infrastructure, Sustainable Transportation Infrastructure, Transportation Related Amenities, or Program Costs, all as defined in the AHSC program guidelines;
		6. Infill Infrastructure Grant Program – grant funds used for site work and residential structured parking (as defined in the IIG guidelines);
		7. Transit Oriented Development Program - rental housing development loans, but not grants for offsite infrastructure;
		8. Joe Serna, Jr. Farmworker Housing Grant Program;
		9. Permanent Local Housing Allocation – Competitive program
		10. Housing for a Healthy California program, including funds awarded either by the Department or a county, but not grants for operating reserves or rental assistance;
		11. Homekey;
		12. Home Investment Partnerships Program;
		13. Community Development Block Grant Program; and
		14. National Housing Trust Fund Program.

“Department Funding Sources” do not include: offsite infrastructure funds; or existing loans or grants under any Department funding source listed above that are at least 14 years old and will be assumed or recast as part of an acquisition and Rehabilitation project.

1. Once a project is awarded Department funds, the Sponsor/Awardee is acknowledging the project as submitted and approved is the project that is to be funded and built. Any bifurcation would make that award null and void, as the awarded project is no longer feasible as originally submitted and  awarded funds are unable to be assumed or assigned.

## **Section 202. Eligible Sponsor**.

1. A Sponsor shall be any individual, joint venture, partnership, limited partnership, trust, corporation, limited liability company, local public entity, or Tribal Entity, or any combination thereof which meets the requirements of subsection (c), below.
2. A Sponsor shall be organized non-profit.
	1. Organized non-profits include a Tribally Designed Housing Entity
3. Except as abrogated below in this subdivision, Sponsor shall demonstrate that it has successfully developed, operated, and owned at least four (4) affordable rental housing developments of equivalent size, scale, and occupancy. Sponsor shall have satisfied this experience requirement at the time of its application for the funds.
4. Notwithstanding the foregoing, and solely for the purpose of applying to the Emerging Developer set-aside, an Emerging Developer shall qualify on its own as a Sponsor so long as the Emerging Developer meets the experience requirements set forth in MHP Guidelines Section 7301 definition.
5. Notwithstanding the foregoing, and solely for the purpose of applying to the Community-Based Developer set-aside, a Community-Based Developer shall qualify on its own as a Sponsor so long as the Community-Based Developer meets the experience requirements set forth in its MHP Guidelines Section 7301 definition above, as well as satisfies the application requirements set forth in Sections 401 and 402 hereof.

1. Tribal Entities, Emerging Developers, and New Community-Based Developers may satisfy this experience requirement by contracting with an entity that meets the requirements of this subdivision (d). Such contract or partnership agreement must be fully executed at the time of application submittal, and it must remain in effect until permanent loan closing and the issuance of any required tax forms.
2. If a joint venture Sponsor relies upon the experience of one of the members to meet the Sponsor eligibility requirements, the joint venture Sponsor must meet the following requirements:
	* 1. The partner with experience must document that experience in the application as required by the NOFA.
		2. The partner with experience must retain a controlling interest in the joint venture for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development. Any transfer of this interest requires the Department’s advance written approval.
		3. The partner with experience must perform a substantial management role in the joint venture for at least seven (7) consecutive years from the date of full occupancy of the Rental Housing Development. Such role shall include the substantial management duties set forth at UMR Section 8313.2.
		4. The partnership agreement must, for the duration of the joint venture Sponsor’s partnership, do the following:
			1. The inexperienced partner must complete training pursuant to TCAC Regulations, Title 4 CCR, Division 17, Chapter 1, Section 10325(c)(1)
			2. Allocate a share of developer fee, Distributions, and net sales proceeds to the partner without experience that is no less than 50 percent of the total; and
			3. Provide the partner without experience with an option to purchase the Rental Housing Development.
3. Sponsor shall demonstrate capacity to acquire, develop, and own affordable rental housing. For purposes of this subdivision, an entity has “capacity” if it has adequate staff, capital, assets, and other resources to efficiently meet the operational needs of the Rental Housing Development; to maintain the Fiscal Integrity of the Rental Housing Development; and to satisfy all legal requirements and obligations in connection with the Rental Housing Development. Evidence of capacity must be reasonably acceptable to the Department in form and substance. Sponsor shall satisfactorily demonstrate capacity at the time of its application for the funds.
4. Sponsor shall maintain direct and continuing control of the Rental Housing Development. Alternatively, if the Department’s funding disbursement is structured with or through a special purpose entity, the Sponsor shall exercise direct and continuing control over such special purpose entity in accordance with UMR Section 8313.2 and throughout the full term of the Department’s use restriction on the Rental Housing Development. Sponsor shall certify that it will abide by this control requirement at the time of its application for the funds.

## **Section 203. Threshold Requirements.**

Projects shall be eligible for an award of funds as long as the application demonstrates that all the following threshold requirements have been met:

1. The applicant is an eligible Sponsor pursuant to Section 202;
2. The application involves an Eligible Project pursuant to Section 201;
3. All proposed uses of Program funds are eligible pursuant to Section 204;
4. The application is complete pursuant to Sections 401 and 402;
5. Achieve a minimum point score of 110 points for universal scoring criteria as outlined in Section 403.
6. The Project, as proposed in the application, is financially feasible as evidenced by documentation such as, but not limited to, Enforceable Funding Commitments, market study, project proforma, sources and uses statement, or other feasibility documentation that is standard industry practice for the type of proposed housing development
7. The Project will maintain Fiscal Integrity consistent with proposed Rents in the Assisted Units and is feasible pursuant to the underwriting standards in UMR Section 8310;
8. The Project site is free from severe adverse environmental conditions, such as the presence of toxic waste that is economically infeasible to remove or cannot be mitigated;
9. The Project site is reasonably accessible to public transportation, shopping, medical services, recreation, schools, and employment in relation to the needs of the Project tenants.
10. Projects involving new construction, acquisition and Substantial Rehabilitation, or conversion of nonresidential structures to residential dwelling units must be physically capable of accommodating broadband service with at least a speed of 25 megabits per second for downloading and 3 megabits per second for uploading (25/3). Internet service and its ongoing fee are not required.
11. The Project complies with the restrictions on demolition as set forth in UMR Section 8302; and
12. The Project complies with the site control requirements as set forth in UMR Section 8303 with the exception that the Sponsor shall maintain site control through the term of the proposed award, as stated in the NOFA, and with the option to extend.

Where site control is in the name of another entity, the Sponsor shall provide documentation, in form and substance reasonably satisfactory to the Department, which clearly demonstrates that the Sponsor has some form of right to acquire or lease the project property (e.g, the entity’s organizational documents).

1. For projects developed in Indian country, the following exceptions apply:
	1. Where site control is a ground lease, the lease agreement between the Tribal Entity and the project owner is for a period not less than 50 years; and
	2. An attorney’s opinion regarding chain of title and current title status is acceptable in lieu of a title report.
2. Funding is prohibited for use in housing H-2A workers.

## Section 204. Eligible Use of Funds.

Funds shall be used only for approved eligible costs that are incurred on the Project as set forth in this section, including interim or bridge loans used to pay such costs. In addition, the costs must be necessary and must be consistent with the lowest reasonable cost consistent with the Project's scope and area as determined by the Department.

1. Funds shall only be used for capital asset related expenses as required by section 16727 of the Government Code.
2. Eligible costs include the following:
	1. Property acquisition;
	2. Refinancing of existing long-term debt, only in connection with a Project involving a Rehabilitation contract in an amount equal to or exceeding $35,000 per unit (which may be adjusted based on the current Consumer Price Index (CPI)), and only to the extent necessary to reduce debt service to a level consistent with the provision of Affordable Rents in Assisted Units and with the Fiscal Integrity of the Project;
	3. Land lease payments;
	4. Construction and Rehabilitation work;
3. Offsite improvements, such as sewers, utilities and streets, directly related to, and required by the Rental Housing Development when other infrastructure funding is unavailable and inaccessible;
4. Onsite improvements related to the Rental Housing Development;
5. Architectural, appraisal, engineering, legal and other consulting costs and fees, which are directly related to the planning and execution of the Project and which are incurred through third-party contracts;
6. Development costs of a residential Unit reserved for an onsite manager, childcare, after- school care, adult daycare, or social service and health amenities integrally linked to, and addressing the needs of the tenants of the Assisted Units.
7. Health amenities does not include any “health facility” as defined by Section 1250 of the Health and Safety Code (HSC) or any “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the HSC.
8. A reasonable Developer Fee subject to the provisions of Section 205;
9. Rent-Up Costs;
10. Reasonable carrying costs during construction, including insurance, construction financing fees and interest, taxes, and any other expenses necessary to hold the property while the Rental Housing Development is under construction;
11. Building permits and state and local fees;
12. Capitalized operating reserves and capitalized replacement reserves up to the amount of the initial deposit required by the Department pursuant to UMR Sections 8308(b) and 8309(b);
13. Escrow, title insurance, recording and other related costs;
14. Costs for items intended to assure the completion of construction, such as contractor bond premiums;
15. Environmental hazard reports, surveys, and investigations;
16. Costs of relocation benefits and assistance required by law; and
17. Any other costs of Rehabilitation or new construction approved by the Department.
18. Except as provided in subsection (b)(8) above, no Program funds shall be used for costs associated exclusively with non-Assisted Units or Commercial Space. A Manager’s Unit may be considered an Assisted Unit for the purpose of allocating development costs. If only a portion of the Rental Housing Development consists of Assisted Units, the Program loan amount shall not exceed the sum of the following:
	1. The costs of all items specified in subsection (b), above, associated exclusively with the Assisted Units;
	2. A share of the costs of common areas used primarily by residential tenants. This share shall be in direct proportion to the ratio between the gross floor area of the Restricted Units and the gross floor area of all residential units; and
	3. A share of the cost of other items such as roofs that cannot be specifically allocated to Assisted Units, non-Assisted Units, or Commercial Space. This share shall be in direct proportion to the ratio between:
		1. The gross floor area of the Assisted Units, plus a share of the gross floor area of common areas used primarily by residential tenants in direct proportion to the ratio between the gross floor area of the Assisted Units and the gross floor area of all units; and
		2. The total gross floor area of the structure or structures.
19. Migrant farmworker assistance as permitted under subdivision (b) of Section [50517.10](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=50517.10&lawCode=HSC) of the HSC.

## Section 205. Cost Limitations.

1. Project development costs must be reasonable, as specified in UMR Section 8311(a) and (b). The limits on development costs specified in UMR Section 8311 shall apply, except that:
	1. For related party sales, property acquisition prices may be set at levels that allow for recovery of verified holding costs, the assumption of existing debt, and the maximization of acquisition tax credits. However, any proceeds realized by the seller, above their costs, shall be contributed back to, and remain with, the Project.
	2. The amount of funds set aside, borrowed, or applied to cover future land lease payments, must be discounted to the present value of these payments.
2. The limits on Developer Fee specified in UMR Section 8312 shall apply, except that:
	1. Section 8312(d) shall not apply.
	2. For non-tax credit new construction projects, the total Developer Fee shall not exceed the following:
		1. For Projects with 49 or fewer Restricted Units (excluding units restricted at levels above 60 percent of AMI): the greater of $40,000 per Restricted/Manager’s Unit or $1,200,000;
		2. For Projects with between 50 and 100 Restricted Units (excluding units restricted at levels above 60 percent of AMI): $2,200,000; and
		3. For Projects with more than 100 Restricted Units (excluding units restricted at levels above 60 percent of AMI) exceed 100 units: $2,200,000 plus $20,000 per Restricted Unit in excess of 100 up to a maximum of $3,500,000. The Developer Fee in excess of $2,200,000 must be deferred. Payment of deferred Developer Fee shall be in compliance with UMR Section 8314.
	3. For projects utilizing four percent tax credits, Developer Fee payments shall not exceed the amount that may be included in project costs pursuant to Title 4 CCR, Section 10327(c)(2); and
	4. Joint ventures that include a Community-Based Developer, an Emerging Developer, or a New Community-Based Developer or that rely on partner to meet the experience requirements of an eligible Sponsor, shall have their allowable total Developer Fee increased according to the following:

* + 1. For non-tax credit projects, an increase of $300,000 over the limits set forth in (b)(2) (a)-(c) above. Additionally, for projects with more than 100 units as defined above in (b)(2)(c),the Developer Fee paid from sources may increase up to $2,640,000.
		2. For projects utilizing four percent tax credits, an increase consistent with Title 4 CCR, Section 10327(c)(2)(E).
1. Except where required to secure local government approvals essential to completion of the Project, or where necessary to receive tax credits for historic preservation, construction materials and amenities not typically found in modestly designed rental housing are ineligible costs.

## Section 206. Type and Term of Loan.

1. Program funds shall be used for construction period financing or post-construction, permanent financing only.
	1. For construction period financing, all the following shall apply:
2. Program funds shall only be disbursed for payment of obligations which are due for reimbursement of expenditures previously approved by the Department.
3. The Awardee must request disbursements of Program funds on a form prescribed by the Department and such requests must be in accordance with authorized amounts set forth in the budget approved by the Department. With the prior approval of the Department, the ~~A~~wardee may transfer any allocations or portions thereof set forth in the approved budget to other allocated items of said budget.
4. Right of Inspection. The Department may, through its agents or employees, with prior notice inspect the site during construction.
5. The initial term of the loan shall be 55 years, commencing on the date of recordation of the Program loan documents.
	1. The initial term of the loan may be 50 years if the Project is located in Indian country and if a 55-year term is not feasible. The 50-year term shall commence on the date of recordation of the Program loan documents.
6. The Program loan shall be secured by the Project real property and improvements, subject only to liens, encumbrances and other matters of record approved by the Department pursuant to UMR Section 8315. The Program loan shall have priority over loans provided by the Affordable Housing Program administered by the Federal Home Loan Bank.
7. For projects located in Indian country, the subject instrument shall be deemed sufficiently recorded if recorded with the Land Titles and Records Office at the BIA or if the subject instruments are recorded in the county recording system having jurisdiction over the property. If a Department loan is recorded against a fee interest, then there must be a restriction preventing that land from being put into trust until the affordability term of the Department loan/grant term has run.
8. Where the requirements of federal funding for a project, or the requirements of the low-income housing tax credits used in a project, would cause a violation of the requirements of these guidelines, the requirements of these guidelines may be modified as necessary to ensure program compatibility. Where the requirements of federal funding or tax credits create what are deemed to be minor inconsistencies as determined by the director of the Department, the Department may waive the requirements of these guidelines as deemed necessary to avoid an unnecessary administrative burden. Any such modifications or waivers shall be recorded in the Regulatory Agreement or other documents governing the loan.

## Section 207. Maximum Loan Amounts.

1. When sizing the loan, the Department will consider all other available financing and assistance, including the full amount of any tax credit equity generated by the Project. In addition, the loan amount shall not exceed the total eligible costs required to do the following:
	1. Acquire, develop, and construct or Rehabilitate the Rental Housing Development;
	2. Ensure that Rents for Assisted Units comply with Program requirements; and
	3. Operate the Rental Housing Development in compliance with all other Program requirements.
2. With the exception of deferred Developer Fee, Department funds shall not be used to supplant other available financing, including funds committed by local jurisdictions.
3. The per unit loan limit shall be defined in the NOFA. For loan limit calculations, the Unit count shall include the number of Units within the Rental Housing Development.
4. The loan limit will be calculated based upon the units’ level of income restriction and number of bedrooms per Unit.
5. In each NOFA, the Department shall establish a maximum per Project loan amount. This maximum shall be set at a level that ensures sufficient demand for Program funds while meeting the Program’s geographic and other distribution goals, taking into account the demand evidenced in previous funding rounds, the availability of other sources of rental subsidy financing and the total amount of Program funds available for award.
6. Joint ventures between an experienced Sponsor and an Emerging Developer, Community-Based Developer, or New Community-Based Developer will have increased maximum loan limits by $25,000 per unit.

## Section 208. Interest Rate and Loan Repayments.

Loans shall have the following terms:

1. Loans shall bear simple interest on the unpaid principal balance at a rate that is the lesser of:
	1. Three percent per annum; or,
	2. If a project has received an allocation of tax credits, the maximum rate that allows the Program loan to be treated as debt for federal or state low-income housing tax credit purposes, or that avoids the inability to syndicate due to projected negative capital account balances, but not less than 0.42 percent, but only if the change in interest rate:
		1. Materially increases the feasibility of the Project; and
		2. Ensures long term affordability for the residents.

The Department may require a third-party tax professional to verify the necessity for reducing the interest rate below three percent, pursuant to subdivision (a)(2), the cost of which shall be borne by the Sponsor.

1. Interest shall accrue from the date that funds are disbursed by the Department to or on behalf of the Sponsor.
2. For the first 30 years of the loan term, payments in the amount of 0.42 percent of the original principal loan balance shall be payable to the Department commencing on the last day of the Initial Operating Year and continuing on each anniversary date thereafter. The payment shall remain constant for the first 30 years regardless of any paydown of the original loan amount. The balance of accrued interest shall be payable out of Operating Income remaining after payment of approved Operating Expenses, debt service on other loans, reserve deposits. Commencing on the 30th anniversary of the last day of the Initial Operating Year, iinterest shall be payable annually in an amount equal to the lesser of: (1) the full amount of interest accruing on the original principal loan amount; or (2) the amount determined by the Department to be necessary to cover the costs of continued monitoring of the Project for compliance with the requirements of the Program. HUD Section 811 and 202 projects will be subject to the requirements of this subsection.
3. Except for the required payment of 0.42 percent of the original principal loan balance, the Department shall permit the deferral of accrued interest for such periods and subject to such conditions as will enable the Sponsor to maintain Affordable Rents, maintain the Fiscal Integrity of the Project, and pay allowable Distributions pursuant to UMR Section 8314.
4. All Program loan payments (including the 0.42 percent loan payment) shall be applied in the following order: (1) to any expenses incurred by the Department to protect the property or the Department’s security interest in the property, or incurred due to the Sponsor’s failure to perform any of the Sponsor’s covenants and agreements contained in the deed of trust or other loan documents; (2) to the payment of accrued interest; and (3) to the reduction of principal.
5. The total outstanding principal and interest, including deferred interest, shall be due and payable in full to the Department at the end of the loan term including any extension granted by the Department.

## Section 209. Appraisal and Market Study Requirements.

1. As a condition of funding, the Department will require an appraisal or market study, or both, to:
	1. Establish a market value for the land to be purchased or leased as part of the Project for purposes of evaluating the reasonableness of the purchase price or lease terms pursuant to Section 204.
	2. Assist with establishing other reasonable development costs pursuant to Section 204
	3. Assess Fiscal Integrity.
	4. Verify an adequate tenant market.
2. Any appraisal required by the Department shall be prepared at the Sponsor's expense by an individual or firm which:
	1. Has the appropriate license and the knowledge and experience necessary to competently appraise low-income residential rental property;
	2. Is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible appraisal;
	3. In reporting the results of the appraisal, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true value and condition of the property; and
	4. Is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor.
3. Any market study required by the Department shall conform to the market study guidelines adopted by TCAC and be prepared at the Sponsor's expense by an individual or firm which:
	1. Has the knowledge and experience necessary to conduct a competent market study for low-income residential rental property;
	2. Is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible market study;
	3. In reporting the results of the market study, communicates each analysis, opinion and conclusion in a manner that is not misleading as to the true market needs for low-income residential property; and
	4. Is an independent third party having no identity of interest with the Sponsor, the partners of the Sponsor, the intended partners of the Sponsor, or with the general contractor.

**The remaining sections of Article 2 below apply only to FWHG-funded Projects**

## Section 210. FWHG Limited Partnership Eligibility Requirements.

1. To be eligible to apply for funding, a Limited Partnership shall demonstrate to the Department's satisfaction that it is controlled by a Nonprofit Corporation, Limited Liability Company, or a combination of both. If the Limited Partnership is controlled by a Limited Liability Company, the Limited Liability Company shall demonstrate to the Department's satisfaction that it is controlled by a Nonprofit Corporation.
2. In making its determination, the Department shall consider the Limited Partnership agreement, any limited liability company operating agreement, the articles and bylaws of any Nonprofit Corporation, and any pertinent side agreements between limited and general partners relating to the management and operations of the Limited Partnership (collectively, "organizational documents").
3. In order to demonstrate control, a Nonprofit Corporation or Limited Liability Company must have the authority to perform substantially all of the following functions, as shown in the organizational documents:

(1) Employ and maintain a staff that has the experience and ability to perform the responsibilities and functions of the partnership.

(2) Rent, maintain and repair the Rental Housing Development or, if such duties are delegated to a property management agent, hire and oversee the work of the property management agent.

(3) Hire and oversee the work of all persons necessary to provide services for the management and operation of the Limited Partnership business.

(4) Execute and enforce all contracts executed by the Limited Partnership.

(5) Execute and deliver all partnership documents on behalf of the Limited Partnership.

(6) Prepare or cause to be prepared all reports to be provided to the partners and lenders on a monthly, quarterly, or annual basis consistent with the requirements of the Limited Partnership agreement.

(7) Coordinate all present and future development, construction, or Rehabilitation of the Rental Housing Development that is the subject of the Limited Partnership agreement.

(8) Monitor compliance with all government regulations and file or supervise the filing of all required documents with government agencies.

(9) Acquire, hold, assign or dispose of partnership property or any interest in partnership property.

(10) Borrow money on behalf of the Limited Partnership, encumber limited partnership assets, place title in the name of a nominee to obtain financing, prepay in whole or in part, refinance, increase, modify or extend any obligation.

(11) Pay organizational expenses incurred in the creation of the partnership and all operational expenses.

(12) Determine the amount and timing of distributions to partners and establish and maintain all required reserves.

## Section 211. FWHG Nonprofit Corporation Eligibility Requirements.

For all Sponsors, where a Nonprofit Corporation is part of the ownership structure, the involved Nonprofit Corporation shall meet the following requirements:

1. The articles and by laws shall clearly demonstrate that the corporation's authorized mission includes the provision of affordable or low-income housing.
2. Any fees earned as a general partner shall remain with the corporation. No fees shall be assigned to a for-profit organization.
3. The partnership agreement shall be structured to permit the Nonprofit Corporation to eventually purchase the Rental Housing Development.

# Article 3. General Requirements.

## Section 301. Rent Standards.

The Department shall establish Rent standards for Assisted Units in each Project as follows:

1. Rent limits for initial occupancy and for each subsequent occupancy by a new Eligible Household shall be based on Unit type, applicable income limit, and area in which the Project is located, following the calculation procedures used by TCAC and using income limits in 5 percent increments of AMI, including the income limits utilized by the Program for this purpose. The maximum Rent limit shall be 30 percent of 80 percent of AMI for the appropriate Unit size.
2. Rents will be further restricted in accordance with Rent and income limits submitted by the Sponsor in its application for the Program loan, approved by the Department, and set forth in the Regulatory Agreement. Rents shall not exceed 30 percent of the applicable income eligibility level. In the event the Unit is subsidized, the tenant-paid portion of the rent shall not exceed 30 percent of the applicable income eligibility level.
3. Rents in Assisted Units may be adjusted no more often than annually. The amount and method of adjustment for Assisted Units shall be in accordance with the regulations and procedures used by TCAC and using income limits in 5 percent increments of AMI, as approved by the Department.
4. The Department may permit an annual Rent increase greater than that permitted by this section if the Project’s continued Fiscal Integrity is jeopardized due to factors that could not be reasonably foreseen.
5. For Units receiving HUD Section 8 or other similar rental assistance, the rules of the rental assistance program pertaining to Rent increases will prevail for as long as the rental assistance remains in place. Changes in the tenant contribution amounts may occur more often than annually as required by the rental assistance program.
6. Where a Project is receiving renewable Project-based rental assistance:
	1. The Sponsor shall in good faith apply for and accept all renewals available;
	2. The Sponsor shall fund a transition reserve to be used in the event the rental assistance contract is terminated. The minimum amount of the transition reserve for renewable Project-based rental assistance shall be the amount sufficient to prevent Rent increases for one year following the loss of the rental assistance. The minimum amount of the transition reserve for non-renewable Project-based rental assistance or operating subsidies shall be the amount sufficient to prevent Rent increases for two years following the loss of the rental assistance. Transition reserves may be capitalized or funded from annual Project cash flow in amounts to be approved by the Department. Use of funds in the reserve shall be subject to the prior review and approval of the Department; and
	3. If the Project-based rental assistance is terminated, the owner shall notify the Department in writing immediately upon notice of rental assistance contract termination and shall make every effort to find alternative subsidies or financing structures that would maintain the tenant income, rent, and special population targeting specified in the Department’s Regulatory Agreement. Upon documenting to the Department’s satisfaction unsuccessful efforts to identify and obtain alternative resources, and where the termination occurs through no fault of the Sponsor:
		1. Rents and income limits for Units previously covered by this rental assistance may be increased above the levels allowed pursuant to subsection (c), above, but only to the minimum extent required for Fiscal Integrity, as determined by the Department, with income limits not to exceed 80 percent of AMI and Rents not to exceed 30 percent of 80 percent of AMI.
		2. Restrictions for Units previously covered by this rental assistance requiring occupancy by special populations, including by Persons Experiencing Homelessness, Persons Experiencing Chronic Homelessness and Special Needs Populations, may be modified or eliminated, but only to the minimum extent required for Fiscal Integrity, as determined by the Department and only through natural attrition/vacancies
		3. Any increase in Rents and income limits pursuant to subsection (A) above, or modification of special population occupancy requirements pursuant to subsection (B), shall require advance Department approval. To the maximum extent possible, these changes shall minimize the impact on the lowest income Project residents and shall be phased in as gradually as possible.
		4. If, following any increase in Rents and income limits pursuant to subsection (A) above, or modification of special population occupancy requirements pursuant to subsection (B) above, new resources become available, or market demand changes, allowing reversion to the former income and Rent limits or special population occupancy requirements, the Department may re-impose these income and Rent limits or special population occupancy requirements, in whole or in part, subject to an analysis of Project feasibility.
	4. Based on an analysis of the risk associated with specific rental assistance programs, the Department may modify the requirements of subsection (2) above by an amendment to these guidelines. This modification may 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 Sponsor, or adjusting the level to which Rents may be increased upon rental assistance contract termination.

## Section 302. Use of Operating Income.

1. Notwithstanding UMR Section 8314(a)(1), first-priority use of operating income remaining after payment of approved current and prior year operating expenses, reserve deposits and mandatory debt service shall be payment of any:
	1. Approved deferred Developer Fee, pursuant to Section 205, provided that the aggregate of the Developer Fee paid from sources and paid as deferred shall not exceed $3,500,000.
	2. Asset management, partnership management, and similar fees, including fees paid to investors, in an amount not to exceed the sum of:
		1. An amount for the current year, equal to $30,000 for 2016 and increased at the rate of 3.5 percent for each subsequent year, plus
		2. Unpaid asset management, partnership management, and similar fees accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and
	3. Supportive Services Costs that the UMRs would allow to be paid as operating costs, but that other funding sources do not.
2. Where there is a difference between the provisions of the UMR (Title 25 CCR Section 8300 et seq.) and these Guidelines, the provisions of these Guidelines shall prevail in the use of operating cash flow. Any operating income remaining after the payments listed in the previous subsection (a) shall be applied in accordance with UMR Section 8314(a)(2).
3. The requirements of UMR Section 8314(b) through 8314(h) shall apply.

## Section 303. State and Federal Laws, Rules, Guidelines and Regulations.

The Sponsor agrees to comply with all applicable state and federal laws, rules, guidelines and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Development, the Sponsor, its contractors or subcontractors, and any Loan activity, including without limitation the following:

1. Fair Housing Act

The Sponsor shall comply with all state and federal fair housing laws. At the Department’s election, Sponsor must submit an attorney’s opinion acceptable to the Department describing the intended occupancy restrictions and how they comply with the California Unruh Civil Rights Act (Civ. Code, §§ 51 - 53), the California Fair Employment and Housing Act (FEHA) (GC, § 12900 et seq.) and the FEHA regulations, Title 2, CCR Sections 12005-12271. Occupancy restrictions must be carried out in a manner which does not violate state or federal fair housing laws.

1. Americans with Disabilities Act and Accessibility

The Sponsor shall ensure compliance with all applicable state and federal building codes and accessibility laws and standards. In addition, the Sponsor shall ensure that the Project meets the following requirements:

* 1. New Construction Projects: All new construction projects shall adhere to the accessibility requirements set forth in Chapter 11A and 11B of the California Building Code (CBC).
	2. All new construction projects must provide a minimum of fifteen percent (15%) of the units with features accessible to persons with mobility disabilities plus a minimum of ten percent (10%) of the units with features accessible to persons with hearing or vision disabilities.
	3. Compliance and Verification: Prior to loan closing, the Sponsor shall provide a certification of compliance, signed by the Borrower and the project architect as well as third party documentation confirming compliance (by a Certified Access Specialist (CASp) or someone with demonstrated experience meeting federal accessibility standards.
	4. Accessible Units: All new and existing projects with fully accessible units for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows:
		1. First, to a current occupant of another unit of the same project having a disability requiring the accessibility features of the vacant unit and occupying a unit not having such features, or if no such occupant exists, then
		2. Second, to an eligible qualified applicant on the waiting list having a disability requiring the accessibility features of the vacant unit.

1. When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, the owner or manager shall require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.
2. Owners and managers shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with a disability, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit.
3. Violence Against Women Act

Where applicable, Sponsors shall ensure individuals are not denied assistance, evicted, or have their assistance terminated because of their status as survivors of domestic violence, dating violence, sexual assault, or stalking, or for being affiliated with a victim, pursuant to 34 USC Section 12491

1. Pet Friendly Housing Act

Sponsor shall authorize residents of the housing development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (California Health & Safety Code, Section 50466).

1. California State Prevailing Wage Law

Projects receiving funding under the Program are subject to California’s prevailing wage law (Lab. Code, § 1720 et seq.). The Sponsor should seek professional legal advice about the law’s requirements. Prior to closing the Program Loan, the Department will require a certification of compliance with California’s prevailing wage law. The certification must verify that prevailing wages have been paid and that labor records will be maintained and made available to any enforcement agency upon request. The certification must be signed by the general contractor(s) and the Sponsor.

## Section 304. Relocation Requirements.

The Sponsor of a Project resulting in displacement of persons, businesses or farm operations shall be solely responsible for providing the assistance and benefits set forth in this section and in applicable state and federal law and shall agree to indemnify and hold harmless the Department from any liabilities or claims for relocation-related costs.

1. All persons, businesses or farm operations that are displaced as a direct result of the development of a Project shall be entitled to relocation benefits and assistance as provided in Title 1, GC, Division 7, Chapter 16, commencing at § 7260, and Title 25 CCR, Subchapter 1, Chapter 6, commencing at Section 6000. Displaced tenants who are not replaced with Eligible Households under this Program shall be provided relocation benefits and assistance from funds other than Program funds.
2. The Sponsor shall prepare or update a relocation plan in conformance with the provisions of Title 25 CCR, Section 6038. The relocation plan shall be subject to the review and approval by the Department prior to the disbursement of Program funds and prior to actual displacement of persons, businesses, or farm operations.
3. All Eligible Households who are temporarily displaced as a direct result of the development of the Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy Assisted Units meeting the tenant occupancy standards set forth in UMR Section 8305.
4. All ineligible Households who are temporarily displaced as a direct result of the development of the Project shall be entitled, upon initial occupancy of the Rental Housing Development, to occupy any available non-Assisted Units for which they qualify.
5. Notwithstanding the preceding subparagraphs, tenants who are notified in writing prior to their occupancy of an existing Unit that the Unit may be demolished as a result of funding provided under the Program shall not be eligible for relocation benefits and assistance under this section. The form of any notices used for this purpose shall be subject to Department approval.

## Section 305. Construction Requirements.

1. The Department may review Project plans and specifications to ensure the following objectives:

Maintenance, repair, and replacement costs shall be minimized during the useful life of the Rental Housing Development through use of durable, low maintenance materials**,** and equipment and design features that minimize wear and tear.

* 1. Operating costs shall be minimized during the useful life of the Rental Housing Development.
	2. Tenant security shall be enhanced through features such as those designed to prevent or discourage unauthorized access and to allow for ready monitoring of public areas.
	3. Unit sizes, amenities, and general design features shall not exceed the standard for new developments rented at or below the market rent in the area of the Project.
1. The Sponsor shall ensure that the construction work for the Project is performed in a competent, professional manner at the lowest reasonable cost consistent with the Project's scope, design, and locality and not in excess of the total funds available.
2. The Sponsor shall enter into a written contract for the construction or Rehabilitation work with a contractor having the appropriate state license.
3. The construction contract shall be a completely integrated agreement containing all the understandings, covenants, conditions and representations between the parties and shall specify a total contract price consistent with the Project budget approved by the Department.
4. The Sponsor shall ensure the construction contract requires compliance with state prevailing wage law (Labor Code, Chapter 1, Part 7, Division 2, commencing with Section 1720). The construction contract shall require the contractor to maintain labor records as required by law, and to make these records available to any enforcement agency upon request.

Prior to the close of the Program loan, the Sponsor shall provide to the Department a certification that prevailing wages have been paid or will be paid, and that the records shall be available consistent with the requirements of this subsection.

# Article 4. Application Process.

## Section 401. Application Process.

1. The Department shall periodically issue a NOFA that specifies, among other things, the amount of funds available, application requirements, the allocation of rating points, minimum eligibility threshold point scores, the deadline for submittal of applications, the schedule for rating and ranking applications and awarding funds, and the general terms and conditions of funding commitments. A NOFA may declare as ineligible those Project applications for which the Department has issued, or concurrently will issue, a special NOFA pursuant to subsection (d)(4), below. Applications selected for funding shall be approved at loan amounts, terms, and conditions specified by the Department. For each Project selected for funding, the Department shall issue an award letter and standard agreement. With respect to any NOFA involving MHP funding and funding from one or more Designated Programs, the Department may require Applicants to specify all sources and amounts of funding for which the Applicant is applying. This requirement may be set forth in either the NOFA or the application.
2. Substituting previously awarded Department funds is prohibited, except as provided herein. Sponsors seeking to substitute previously awarded funds must request withdrawal of their prior award in writing and provide reasonable justification that the substitution is necessary to ensure project feasibility. Substitutions based solely upon Sponsor preference or convenience will not be permitted. Department approval of the withdrawal is required prior to the application due date without assurance of receiving a new award. This prohibition applies to funds awarded under any Department program, including a prior MHP award.
3. Applications for funding while a separate, concurrent application is pending shall not be considered. For example, if a Sponsor has submitted an Affordable Housing Sustainable Communities (AHSC) application prior to the MHP application deadline, the AHSC application is under review, the AHSC application does not include funding available under the applicable MHP NOFA and the MHP NOFA application does not include AHSC funding, the application will be deemed ineligible. Concurrent applications proposing the same Department funding sources are permitted. This paragraph is not applicable to or intended to prevent an application for multiple Department Program funds available under a single NOFA as contemplated by AB 434.
4. In order to implement goals and purposes of the Program, the Department may adopt measures to direct funding awards to designated Project types including, but not limited to, Rural Area Projects, Projects located in areas needing additional funding to achieve a reasonable geographic distribution of Program funds, Projects preserving continued affordability, and Projects with specified funding characteristics. These measures may include, but are not limited to:
	1. Issuing a special NOFA for designated Project types.
	2. Awarding bonus points within a particular NOFA to designated Project types.
	3. Reserving a portion of funds in the NOFA for designated Project types.
	4. Notwithstanding anything in these guidelines to the contrary, a special NOFA issued pursuant to this subsection may establish an over-the-counter application process, meaning the Department continuously accepts and rates applications according to minimum threshold criteria published in a NOFA for the process, and makes loans to Projects that meet or exceed these criteria until the funding available for the process is exhausted. At a minimum, a special NOFA shall include a description of the application process and funding conditions, shall require compliance with Section 203, and shall establish minimum funding threshold criteria based on the rating criteria set forth in Section 403.
5. Applications selected for funding shall be approved subject to conditions specified by the Department.
6. The Department may adjust these procedures as follows:
7. It may elect to not evaluate compliance with some or all eligibility requirements for applications that are not within a fundable range, as indicated by a preliminary point scoring.
8. Applications will be reviewed, and negative points assessed, consistent with the Department’s negative points policy.

## Section 402. Application Content and Application Eligibility Requirements.

1. Application shall be made on a form(s) made available by the Department, without modification, requesting the information deemed necessary by the Department to evaluate compliance with the MHP guidelines and all applicable statutes, regulations, and similar rules. Without limiting the generality of the foregoing, with respect to any NOFA involving MHP funding and funding from one or more Designated Programs, the application may require the Applicants to specify all sources and amounts of funding for which they are applying .
2. An application shall be deemed complete when:
	1. The application includes a letter providing prior notification to the local legislative body, or tribal governing body, pursuant to HSC Section 50675.7(e).
	2. The application meets all threshold requirements, as set forth in Section 203, the NOFA and the application.
	3. The application includes authorizing resolutions of the governing boards of both the Sponsor and a co-Sponsor, except where the Sponsor(s) are individuals.
	4. The Department is able to review the application and assess the proposed project’s feasibility pursuant to UMR Section 8310.
	5. Pursuant to Section 403, applications shall be evaluated based solely upon the contents of the application. If documents required for scoring are not included, the application will not be deemed incomplete; however, failure to submit necessary documents, as set forth in the NOFA or application, may adversely affect the score of the application. Information or documents received after the application submission deadline will not be considered.
3. Applications shall be evaluated for compliance with the threshold and eligibility requirements of these Guidelines, and applicable statutes, and scored based on the application selection criteria listed in Section 403 of these Guidelines. The applications with the highest number of points shall be selected for funding, provided that they meet all threshold and eligibility requirements and achieve specified minimum scores.
4. The Sponsor shall disclose on the application whether the Project will be part of an application to TCAC seeking hybrid tiebreaker incentives. This election is irrevocable. Once awarded, the Department will not break up or combine project awards to accommodate a conversion to or from a hybrid project.
5. For Applicants applying as Community-Based Developers, the entity must demonstrate in their application that they have community knowledge, commitment to long-term community investment, and population-specific cultural competency, all through a combination of the following: receipt of grant funds for services within the relevant neighborhood or community, cultural and linguistic competency on staff, a record of hiring from the community, and membership in or recruitment from a local Urban League (or substantially equivalent) organization. The sufficiency of the foregoing demonstration shall be evaluated in the reasonable discretion of the Department. The entity shall be allowed to define their served community within reason, for example by specifying a neighborhood geography of a specific number of square miles within the location of their central office, which area should include the proposed project.

## Section 403. Project Scoring and Selection – See Appendix A

**For the purposes of the Draft Program Guidelines, all scoring criteria have been pulled out and placed in an appendix. This appendix details the scoring criteria appliable to all programs subject to AB 434. Additional detail on the rating and ranking process is also included in the stakeholder memo.**

1. Any reference outside of these Guidelines and Appendix, including references in the guidelines or regulations for any Designated Program, to the ranking and rating or the administration of funds on a manner consistent with MHP shall not be interpreted as authorizing funding criteria or requirements that conflict with those approved by the voters through a statewide initiative or referendum.

## Section 404. Performance Deadlines.

1. Upon receipt of an award of Program funds to a Project, the Sponsor shall be required to secure all permanent financing, including tax credits and bond allocation no later than 24 months after the date of award.
2. Failure to meet the requirement set forth in (a) above shall result in withdrawal of the Department’s funding award.
3. An extension, not to exceed six months, may be granted by the Department, at its sole discretion, only if the Sponsor has demonstrated to the Department’s satisfaction that the failure was due to circumstances entirely outside the Sponsor’s control and offers reasonable assurance that all financing can be secured within the extension period.
	1. Failure to compete successfully for TCAC or CDLAC awards, alone, is not sufficient basis to receive an extension.
4. If a previously awarded bond allocation and/or tax credit reservation is withdrawn by TCAC or CDLAC for failure to meet deadlines, the Department’s award shall be withdrawn and no extensions will be granted.

# Article 5. Operations.

## Section 501. Legal Documents.

* + 1. Upon the award of Program funds to a Project, the Department shall enter into one or more agreements with the Sponsor, including a Standard Agreement, which shall commit funds from the Program, subject to specified conditions, in an amount sufficient to encumber the approved Program Loan amount. The Standard Agreement shall require the Sponsor to comply with the requirements and provisions of these Guidelines, and generally applicable state contracting rules and requirements, and all other applicable laws. The agreement or agreements shall contain the following:
	1. A description of the approved Project and the permitted uses of Program funds;
	2. The amount and terms of the Program loan;
	3. The regulatory restrictions to be applied to the Project through the Regulatory Agreement as consideration for the Program Loan;
	4. Provisions governing the construction work and, as applicable, the acquisition of the Project site, and the disbursement of Loan proceeds;
	5. Special conditions imposed as part of Department approval of the Project;
	6. Requirements for the execution and the recordation of the agreements and documents required under the Program;
	7. Terms and conditions required by federal or state law;
	8. Requirements regarding the establishment of escrow accounts for the deposit of documents and the disbursement of Program loan funds ;
	9. The approved schedule of the Project, including land acquisition if any, commencement and completion of construction or Rehabilitation work, and occupancy by Eligible Households;
	10. The approved Project development budget and sources and uses of funds and financing;
	11. Requirements for reporting to the Department;
	12. Terms and conditions for the inspection and monitoring of the Project in order to verify compliance with the requirements of the Program;
	13. Provisions regarding compliance with California’s Relocation Assistance Law (Gov. Code, § 7260 et seq.) and the implementing regulations adopted by the Department (Cal. Code Regs., tit. 25, § 6000 et seq.), or to the extent applicable, compliance with federal Uniform Relocation Act requirements;
	14. Provisions regarding compliance with article XXXIV, section 1 of the California Constitution;
	15. Provisions relating to the placement of a sign on or in the vicinity of the Project site indicating that the Department has provided financing for the Project, or provisions relating to the Department’s arrangement, in its sole and absolute discretion, for publicity of the Program loan;
	16. Remedies available to the Department in the event of a violation, breach or default of the agreement; and
	17. Other provisions necessary to ensure compliance with the requirements of the Program and applicable state and federal laws.
1. The Department shall enter into a Regulatory Agreement with the Sponsor for not less than the original term of the loan that shall be recorded against the property of the Project prior to the disbursement of funds. The Regulatory Agreement shall include, but not be limited to, the following:
2. The number, type and income level of Assisted Units pursuant to UMR Section 8304;
3. Standards for tenant selection pursuant to UMR Section 8305;
4. Provisions regulating the terms of the rental agreement pursuant to UMR Section 8307;
5. Provisions related to an annual operating budget approved by the Department pursuant to Section 506;
6. Provisions related to a management plan pursuant to Section 504;
7. Provisions related to a Rent schedule, including initial Rent levels for Assisted Units and non-Assisted Units pursuant to subsections (a) and (b) of Section 301;
8. Conditions and procedures for permitting Rent increases pursuant to Section 301;
9. Provisions for limitations on distributions pursuant to UMR Section 8314; and on developer fees pursuant to UMR Section 8312;
10. Provisions relating to annual reports, inspections and independent audits pursuant to Sections 504 and 505;
11. Provisions regarding the deposit and withdrawal of funds to and from reserve accounts in accordance with UMR Section 8308 and 8309;
12. Assurances that the Rental Housing Development will be maintained in a safe and sanitary condition in compliance with state and local housing codes and the management plan, pursuant to Section 504;
13. Description of the conditions constituting breach of the Regulatory Agreement and remedies available to the parties thereto;
14. Provisions governing use and operation of non-Assisted Units and common areas to the extent necessary to ensure compliance with program requirements;
15. Provisions relating to enforcement of program requirements by tenants;
16. Special conditions of Loan approval imposed by the Department;
17. Provisions specifying that the Regulatory Agreement shall be binding on all assigns and successors in interest of the Sponsor and that all sales, transfers, and encumbrances shall be subject to Section 502;
18. Other provisions necessary to assure compliance with the requirements of the Program.
19. All Program loans shall be evidenced by a promissory note payable to the Department in the principal amount of the Loan and stating the terms of the Loan consistent with the requirements of the Program. The note shall be secured by a deed of trust on all of the sites comprising the Project property naming the Department as beneficiary or by other security acceptable to the Department; this deed of trust or other security shall be recorded junior only to such liens, encumbrances and other matters of record approved by the Department and shall secure the Department's financial interest in the Project and the performance of Sponsor's Program obligations.

## Section 502. Sales, Transfers, Encumbrances and Loan Payoff.

1. A Sponsor shall not directly or indirectly sell, assign, transfer, or convey the Rental Housing Development, or any interest therein or portion thereof, without the express prior written approval of the Department. A sale, transfer or conveyance may be approved only if all of the following requirements are met:
	1. The existing Sponsor is in compliance with the Regulatory Agreement and other loan documents or the sale, transfer or conveyance will result in the cure of any existing violations;
	2. The successor-in-interest to the Sponsor agrees to assume all obligations of the existing Sponsor pursuant to the Regulatory Agreement and other loan documents and the program;
	3. The successor-in-interest is an eligible Sponsor and demonstrates to the Department's satisfaction that it can successfully own and operate the Rental Housing Development and comply with all Program requirements; and
	4. No terms of the sale, transfer, or conveyance jeopardize either the Department's security or the successor's ability to comply with all Program requirements.
2. If the Sponsor or its successor-in-interest is a partnership, the Sponsor shall not discharge or replace any general partner or amend, modify or add to its partnership agreement, or cause or permit the general partner to amend, modify or add to the organizational documents of the general partner, without the prior written approval of the Department.
3. The Sponsor may transfer limited partnership interests without the prior written approval of the Department.
4. If the Department approves a sale, assignment, transfer, or conveyance in accordance with the provisions of subparagraph (a) above, the Department shall grant its approval subject to such terms and conditions as may be necessary to preserve or establish the Fiscal Integrity of the Project. Such conditions may include:
	1. The deposit of sales proceeds, or a portion thereof, to maintain required reserves, or to offset negative cash flow;
	2. The recapture of syndication proceeds or other funds in accordance with special conditions included in any agreement executed by the Sponsor; or
	3. Such conditions as may be necessary to ensure compliance with the Program requirements.
5. The Sponsor shall not encumber, pledge, or hypothecate the Rental Housing Development, or any interest therein or portion thereof, or allow any lien, charge, or assessment against the Rental Housing Development without the prior written approval of the Department. The Department will not permit refinancing of existing liens or additional financing secured by the Rental Housing Development except to the extent necessary to maintain or improve the Fiscal Integrity of the Project, to maintain Affordable Rents, or to decrease Rents and for no other purpose, including, but not limited to, cash payments to the Sponsor, repayment of general partner loans or of limited partner loans, or for limited partner buyouts. Notwithstanding the general provisions in UMR Section 8308(g), this special condition controls, in that no reserve balance can fund a limited partner buyout or exit.
6. No loan may be paid off prior to maturity without the prior written consent of the Department in its sole discretion, which consent shall be subject to conditions deemed necessary to ensure compliance with the Program requirements.

## Section 503. Defaults and Loan Cancellations.

1. In the event of a breach or violation by the Sponsor of any of the provisions of the Regulatory Agreement, the promissory note, or the deed of trust, or any other agreement pertaining to the Project, the Department may give written notice to the Sponsor to cure the breach or violation within a period of not less than 15 days. If the breach or violation is not cured to the satisfaction of the Department within the specified time, the Department, at its option, may declare a default under the relevant document(s) and may seek legal remedies for the default including the following:
	1. The Department may accelerate all amounts, including outstanding principal and interest, due under the loan and demand immediate repayment thereof. Upon a failure to repay such accelerated amounts in full, the Department may proceed with a foreclosure in accordance with the provisions of the deed of trust and state law regarding foreclosures.
	2. The Department may seek, in a court of competent jurisdiction, an order for specific performance of the defaulted obligation or the appointment of a receiver to operate the Rental Housing Development in accordance with Program requirements.
	3. The Department may seek such other remedies as may be available under the relevant agreement or any law.
	4. In the event the Project is or has been awarded additional Department funding, any and all such funding will be cross-defaulted to and among one another in the respective loan or, where applicable, grant documents. A default under one source of Departmental funding shall be a default under any and all other sources of Department funding in the Project.
2. If the breach or violation involves charging tenants Rent or other charges in excess of those permitted under the Regulatory Agreement, the Department may demand the return of such excess Rents or other charges to the respective households. In any action to enforce the provisions of the Regulatory Agreement, the Department may seek, as an additional remedy, the repayment of such overcharges.
3. The Department may cancel loan commitments under any of the following conditions:
	1. The objectives and requirements of the Program cannot be met;
	2. Implementation of the Project cannot proceed in a timely fashion in accordance with the approved plans and schedules;
	3. Special conditions have not been fulfilled within required time periods; or
	4. There has been a material change, not approved by the Department, in the Project or the principals or management of the Sponsor or Project.

Upon Sponsor demonstration of good cause to comply with any or all of the conditions of this subsection, the Department may extend the date for compliance and shall provide the extension in writing.

1. Upon receipt of a notice from the Department of intent to cancel the loan, the Sponsor shall have the right to appeal to the Director.
2. The Department may use amounts in the Housing Rehabilitation and Loan Fund to cure or avoid a Sponsor's default on the terms of any loan or other obligation that jeopardizes the Fiscal Integrity of a Project or the Department's security in the Project. Such defaults may include defaults or impending defaults in payments on mortgages, failures to pay taxes, or failures to maintain insurance or required reserves. The payment or advance of funds by the Department pursuant to this subsection shall be solely within the discretion of the Department and no Sponsor shall be entitled to or have any right to payment of these funds. All funds advanced pursuant to this subsection shall be part of the Program loan and, upon demand, due and payable to the Department. Where it becomes necessary to use the Housing Rehabilitation and Loan Fund to assist a Project to avoid threatened defaults or foreclosures, the Department shall take those actions necessary, including, but not limited to, foreclosure or forced sale of the Project property, to prevent further, similar occurrences and ensure compliance with the terms of the applicable agreements.

## Section 504. Management And Maintenance

1. Housing Development including selection of the tenants, annual recertification of household income and size, evictions, and collection of Rent.
2. The Sponsor is responsible for all repair and maintenance functions of the Rental Housing Development, including ordinary and routine maintenance, replacement of capital items, and extraordinary and/or unforeseen repairs and replacement necessary to maintain the health and safety of the Project and residents. The Sponsor shall ensure maintenance of residential units, Commercial Space and common areas in accordance with local health, building, and housing codes, and the management plan.
3. The Sponsor shall ensure that the Rental Housing Development is managed by an entity approved in writing by the Department that is actively in the business of managing low-income housing. Any management contract or management activities entered into for this purpose shall be subject to Department approval and contain a provision allowing the Sponsor to terminate the contract upon 30-days’ notice. The Sponsor shall terminate said contract as directed by the Department upon determination that management does not comply with Program requirements.
4. The Sponsor shall develop a management plan subject to Department approval prior to loan closing. Any change to the management plan shall be subject to the approval of the Department. The Department may review and request updates to the management plan as necessary and appropriate. The management plan shall be consistent with Program requirements and shall include the following:
	1. The role and responsibility of the Sponsor and its delegation of authority, if any, to the managing agent;
	2. Personnel policy and staffing arrangements;
	3. Plans and procedures for publicizing and achieving early and continued occupancy including marketing plans and application intake;
	4. Procedures for determining tenant eligibility and selecting tenants and for certifying and annually recertifying household income and size;
	5. Plans for carrying out an effective maintenance and repair program;
	6. Rent collection policies and procedures;
	7. A program for maintaining adequate accounting records and handling necessary forms and vouchers;
	8. Plans for enhancing tenant-management relations including maximizing tenant retention;
	9. The management agreement, if any;
	10. Provisions for periodic update of the management plan;
	11. Appeal and grievance procedures; and
	12. Plans for collections for tenant-caused damages, processing evictions and terminations.
5. Linguistic Services. The Awardee shall provide linguistically appropriate services and publications to the occupants of the Rental Housing Development.

## Section 505. Reporting Requirements.

1. No later than 90 days after the end of each Project fiscal year, the Sponsor shall submit the following:
	1. an independent audit of the Rental Housing Development prepared by a certified public accountant in accordance with Department audit requirements, as periodically updated and incorporated by reference.
	2. a complete annual compliance report, including tenant demographics pursuant to Department defined reporting requirements.
2. No later than 60 days prior to the end of each Project fiscal year, the Sponsor shall submit the proposed annual budget and Schedule of Rental Income as detailed in Section 506 below.

## Section 506. Annual Operating Budget And Schedule Of Rental Income

The Sponsor shall submit proposed operating budgets and Schedule of Rental Income (SRI) to the Department prior to occupancy and annually thereafter. These operating budgets and SRI shall be subject to Department approval, be consistent with related and supporting documentation, and comply with the following requirements:

1. Prior to loan closing, the Sponsor shall submit an initial operating budget, SRI, and other documents as requested to the Department. Such budget and SRI shall show all anticipated income; expenses for management, operations and maintenance; debt service; and reserve deposits for the Initial Operating Year. The initial SRI shall show proposed Rents for individual units, gross rent floor date, rental and operating subsidy amounts, and similar information on both individual Units and the Project as a whole.
2. For the Initial Operating Year, Borrower shall operate the Rental Housing Development in accordance with the initial operating budget and SRI, which were approved by the Department prior to loan closing. Such budget shall show all anticipated Operating Income, debt service, Operating Expenses and amount payable to reserves for the Initial Operating Year. Such SRI shall set forth the rent roll, which will identify each tenant household (by unit number or other method of household identification that is acceptable to the Department), as well as the following information in connection with each tenant household: size, income, current Rent, and proposed Rent adjustments (including utility allowances, if applicable). Such SRI shall provide estimated income for Assisted Units, non-Assisted Units, and Commercial Space or use.
3. For as long as deemed necessary by the Department to ensure compliance with Program requirements, but for no less than the full-term of the recorded Regulatory Agreement, the Sponsor shall submit to the Department for its approval, 60 days prior to the end of each Project fiscal year, a proposed operating budget and SRI on forms provided by the Department. The proposed annual operating budget and SRI, together, shall set forth the Borrower’s estimates for the upcoming year of Operating Income, Operating Expenses, debt service amounts payable to reserves, and proposed Rent adjustments pursuant to Section 301. The Department, at its sole discretion, may request in situations, such as, but not limited to, re-syndication, change of ownership, or change of Project fiscal year, submission of limited budget information, such as a proposed Rent schedule, proposed management fees, and reserve deposit amounts. The Department may re-impose the requirement for submission of complete operating budgets where necessary to ensure compliance with program requirements.
4. The initial and subsequent proposed operating budgets shall be subject to the approval of the Department based on its determination that the budget line items are reasonable and necessary considering costs for comparable Rental Housing Developments and prior year budgets. Actual expenditures in excess of the approved budget amount shall be subject to Department approval.
5. The initial and subsequent proposed SRI shall be subject to approval of the Department based on its determination that the proposed rents are in accordance with these guidelines and applicable regulations and statutes.
6. For Projects with non-Assisted Units or Commercial Space, all budgets submitted pursuant to this section shall show income and uses of income allocated among Assisted Units, Restricted Units, non-Restricted Units, and Commercial Space. The allocation method used for each budget line item shall be subject to Department approval and shall apportion income and expenses in a manner that accurately reflects the particular physical, operational and economic characteristics of the Project.

# Appendices

## Appendix A – Consolidated Scoring Matrix

Please refer to the Consolidated Scoring Matrix by clicking at here.

## Appendix B – MHP Defined Terms

All capitalized terms used throughout these guidelines which are not defined below shall, unless their context suggests otherwise, be given the same meanings of terms as defined in the Multifamily Housing Program Guidelines or as ascribed in the UMRs (Chapter 7, Subchapter 19, Section 8301).

A list of MHP Defined Terms can be found in the MHP Guidelines here.