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DIVISION OF FINANCIAL ASSISTANCE**

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**Summary of and Response to Public Comments
Uniform Multifamily Regulations
November 30, 2016**

This document summarizes the most salient comments received on the second draft of proposed amendments to the Uniform Multifamily Regulations, dated September 28, 2016, and provides the Department's responses to these comments. After receiving comments on the third draft, the Department will publish a complete summary of all comments submitted during the rulemaking process, along with responses to each one.

Due to time constraints associated with the state rulemaking process, and to avoid delaying the implementation of key amendments, the Department is deferring action on some other potentially meritorious amendments. The Department plans to consider these potential amendments in a subsequent rulemaking exercise. For similar reasons, the Department is not addressing numerous requests for clarifying changes.

Income from Master-Leased Commercial Space [§8300(l)]

The Department received two basic suggestions on how to treat income from commercial space subject to a master lease – set a floor on the master lease payment amount at half of the amount proposed in the second draft (32.5% of market rent), or require that 75% of actual income received by the holder of the master lease be recognized as project income.

The Department was not satisfied with its original proposal, and does not believe that either of the two suggestions achieves its objective of preventing windfalls while compensating master lease holders for shouldering genuine risk. For this reason, it now proposes to delete language pertaining to this subject from this regulatory package, and to address it in a future package.

Neighborhood Level Tenant Preferences [§8305(a)(3)]

A number of commenters raised concerns about requiring “conclusive” evidence that neighborhood-level preferences comply with fair housing law. They also had concerns with requiring local preferences for residents living or working in the jurisdiction in which the project is located comply with fair housing law.

In response, the Department is now proposing to drop the word “conclusive” to avoid the appearance that the compliance test bar is higher than it is. It is retaining the provision that requires live/work preferences to comply with fair housing law, as

compliance is a legal requirement, whether explicitly stated or not.

Exemptions to Occupancy Standards [§8305(b)]

Many commenters requested the restoration of the exceptions the Department had proposed to its standard unit occupancy standards. The Department has restored those that do not raise fair housing issues.

Use of Reserves for Limited Partner Exit Costs [§8308(g) and 8309]

There were multiple requests for relaxing the proposed regulation provisions that ban the use of replacement and operating reserves to buy out limited partners at year 15.

Some commenters were under the impression that the proposed ban would prevent prudent spending down of replacement reserves prior to the exit, which it would not. Others requested that reserve amounts in excess of Department requirements be made available for exit costs.

To keep properties in good physical condition, the Department continues to believe that replacement reserves should be used exclusively for improvements. However, it acknowledges that in some situations exit costs are unavoidable, and that excess operating reserve funds could be used to cover this cost without compromising project operations. For this reason, it is now proposing to allow operating reserve funds in excess of those required to be maintained by the Department to be used for exit costs.

Underwriting Balloon Payment Loans [§8310(f)]

Commenters requested more specificity regarding the stress test the Department would use to evaluate balloon loans. They also requested that syndication proceeds be considered a source for covering balloon payments.

As long as basic affordability and related regulatory restrictions survive foreclosure, and hence the Department's fundamental policy objectives are reliably satisfied, it no longer sees the need for a stress test, and proposes to delete this requirement entirely.

Balloon Loans / Rent Increase upon Foreclosure or Subsidy Loss [§8310(f)]

To maximize senior loan proceeds, a number of commenters requested that rents be allowed to increase upon either foreclosure or the loss of rental subsidies.

In the event of a loss of rental subsidy, the Department is of the opinion that the benefits of maximizing proceeds and securing investors outweighs the potential loss of affordability for projects that lose rental assistance. Accordingly, it is now proposing to adopt a rule closely patterned after a somewhat similar provision of the Multifamily

Housing Program regulations, and allow rents to increase up to 50% of AMI where needed for project feasibility.

Allowing rents to increase in the event of foreclosure would greatly reduce the benefits of having the bifurcated regulatory agreement. The Department is not willing at this point to accept this arrangement.

Development Cost Limits [§8311(a)]

Commenters generally urged wholesale adoption of TCAC's development cost standards, rather than a modified version of these standards, and pointed out potential detrimental impacts on 4% projects where the apparent high cost sometimes maximizes equity and avoids the need for other public subsidy. They also requested that negative points associated with exceeding the limit applicable upon project completion expire after a defined period.

Based on more analysis of its own portfolio, THE DEPARTMENT proposes modifying its original proposal to set the limit on eligible basis at 160% of total threshold basis limits, rather than 150%, and to allow negative points to be awarded if this percentage exceeds 170% upon completion. To ensure that negative points will be meaningful, while also not functioning to permanently eliminate developers from consideration, it is proposing to limit the duration of the negative points to three years.

Developer Fee [§8312]

Commenters uniformly supported the proposed increase in developer fee cap, and most suggested a further increase.

To ensure adequate subscription to its programs, maintain the financial health of the affordable housing development community, and encourage use of the under-utilized 4% credit resource, the Department is now proposing to set the limit for tax credit projects as follows:

- For 9% projects, the amount TCAC regulations allow to be included in project costs (which currently tops out at \$2 million).
- For 4% projects, the limit applicable to 9% projects plus any deferred fee above this amount that is allowed in eligible basis under TCAC regulations, with the total capped at \$3.5 million.

Services Paid as Operating Expenses [§8314(e)]

The main comment made on this subject was a request for a higher allowance for special needs populations who are not homeless, based on a high need for services and limited funding available from other sources.

Although the Department is hopeful that Medicaid and other mainstream health programs will eventually cover service needs in housing, it acknowledges that there are currently funding gaps for special needs projects, beyond those that serve the homeless. For this reason, its latest proposal is to apply the limit previously proposed for supportive housing not restricted to the chronic homeless (approximately \$3,000 per unit per year) to other units restricted to special needs populations under Department programs.

Improving Access for Persons with Disabilities

Disability Rights California provided a variety of comments aimed at improving access to regulated units by persons with disabilities, including suggestions that there be a requirement for outreach to persons with handicaps to fill vacant accessible units, lease provisions requiring non-handicapped individuals to move from accessible units when other units become available, adopting TCAC's accessible unit requirements, and mandating that accessible units conform to certain building standards.

The Department believes that there is merit to many of these suggestions, and would like to explore them further. However, due to the deadlines and procedural requirements associated with the state's rulemaking process, it cannot do so at time without substantially delaying implementation of other amendments.

Transaction Fees

Commenters questioned whether some of the proposed fees were too high, for simple transactions that did not involve financial concessions from the Department.

The Department has reviewed the list of covered transactions, and concluded that there are some ownership transfers that involve little effort to process, and has exempted these from the proposed fees.

There was also some confusion as to whether the proposed fee would apply to projects not undergoing an AB 1699 restructuring. They do apply in this situation.