# National Housing Trust Fund Allocation Plan and Substantial Amendment to the AP and Consolidated Plan

## National Housing Trust Fund Background

NHTF was established by the Housing and Economic Recovery Act of 2008 (HERA) and is administered by HUD. NHTF is funded with a set-aside from new mortgage purchases. Per 24 CFR Section 93.250, 100 percent of funds must benefit ELI households or households with incomes at or below the poverty line (whichever is greater) when the total amount of NHTF funds is less than $1 billion. On April 4, 2016, HUD announced that nearly $174 million will be made available for NHTF recipients. Of this amount, the allocation to California is $23,228,115.

## NHTF Distribution Method and Recipient Requirements

The Department will distribute NHTF funds by pairing it with the state HOME Investment Partnership (HOME) program with an emphasis on homelessness. The Department will release at least one annual NOFA to distribute NHTF and HOME funds to eligible recipients. The state will distribute funds by selecting applications submitted by eligible recipients, as required by 24 CFR Section 91.320(k)(5)(ii) and require a certification by each eligible recipient that housing units assisted with the NHTF will comply with NHTF federal regulations for development of multifamily rental housing.

NHTF eligible recipients are entitlement jurisdictions, non-entitlement jurisdictions, Developers, and nonprofit corporations that have been certified as a Community Housing Development Organization (CHDO) by the Department pursuant to HOME State Regulations section 8204.1. Native American Entities may apply as Developers. Entitlement jurisdictions receive funds directly from HUD. Non-entitlement jurisdictions are those that are eligible for the state HOME Program administered through HCD.

All recipients and related parties to recipients must adhere to nondiscrimination and affirmative marketing requirements of the HNHTF Program including but not limited to nondiscrimination requirements, as stated within 24 CFR Section 93.303, and Section 93.350. Additionally, recipients and related parties shall comply with the following federal and state requirements:

- Demonstrate ability and financial capacity to complete the activities;
- Make acceptable assurances they will comply with all NHTF requirements during the entire affordability period;
- Demonstrate familiarity and experience with requirements of federal, state, and any other housing programs used in conjunction with NHTF funds; and
- Demonstrate experience and capacity to conduct the eligible NHTF activity in question as evidenced by relevant history.

Pursuant to CFR 24 Section 93.302(d), the federal affordability period is 30 years commencing upon project completion; however, state regulations impose a state affordability period. In order for projects to be eligible for funding, recipients shall comply with state length of affordability periods of 55 years for cities, counties, developers, and CHDOs; and 50 years for projects located on Native American Lands. These affordability periods are required and do not result in any additional points for eligible applications.

**Eligibility Requirements**

Entitlement Area (EA) jurisdictions, Non-EA jurisdictions, developers and CHDOs are eligible to apply for NHTF Program funding for new multi-family construction projects. To be considered, all interested applicants must complete and submit the state HOME Program application for multi- family new construction and the NHTF application for multi-family new construction as specified in the NOFA. Applications for projects located in EA jurisdictions will be rated and ranked competitively with Non-EA applicants based on the application and selection criteria.

Non-entitlement jurisdictions can only apply for NHTF funding for multi-family new construction by also applying for state HOME funds for multi-family new construction. In the event that NHTF must be released in a stand-alone NOFA, without state HOME funds, non-entitlement jurisdictions will be able to apply for stand-alone NHTF funds.

Cities and counties applying shall comply with the following:

- A city may only apply for funding for activities within its incorporated boundaries;

- A county may only apply for funding for activities within its unincorporated areas;

- A city or county applicant must demonstrate to the Department's satisfaction that it has:

    a) staff available or has committed to hiring staff able to operate a local HOME program and oversee the work of an administrative subcontractor, if any;

    b) resolved any audit finding(s), for prior Department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made;

    c) provided a self-certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs; and

    d) provided documentation satisfactory to the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report.

CHDO applicants shall comply with the following:

- Have received the Department’s certification to serve the jurisdiction in which the project is located;
- Resolved any audit findings for prior Department or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made;
- Provided a self-certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs;
- Provided documentation satisfactory to the Department that it is in compliance with the submittal requirements of OMB A-133, Single Audit Report; and
- Provided evidence that the CHDO fulfills at least one of the following roles: sole project developer; sole owner; or sole general partner.

Developer applicants that includes Native American Entities shall comply with the following:

- The Developer is not applying as a CHDO.

- For housing projects on Native American Lands, a Developer must be a Native American Entity or a co-owner with a Native American Entity.

“Native American Lands”, means real property located within the State of California that meets the following criteria: (1) it is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and the land may be leased for housing development and residential purposes under federal law; or (2) lands outside the jurisdiction of tribal government owned or co-owned by a Native American Entity.

A Native American Entity may apply as a Developer for a project activity within its tribal boundaries or within the boundaries of another Tribe. Project activities may be proposed on tribally owned lands outside the jurisdiction of the Tribe.

- A Developer applicant must demonstrate to the Department's satisfaction that it has:

    a) resolved any audit finding(s), for prior Department, or federally funded housing or community development projects or programs to the satisfaction of the Department or federal agency by which the finding was made; and
    b) provided a self- certification that it is not debarred or suspended from participation in federal or state housing or community development projects or programs.

## Application Requirements

The state will require the NOFA and applications to contain a description of the eligible activities to be conducted with NHTF funds as required in CFR 24 Section 93.200 and that each eligible recipient certify that housing assisted with NHTF funds will comply with NHTF requirements.

The NOFA shall specify the maximum amount of project funds available, any prohibitions on uses of funds, availability of administrative funds, general terms and conditions of funding allocations, timeframe for submittal of applications, and application requirements as follows:

- Application shall be made on a form made available by the Department.

- An application shall be deemed complete when the Department is able to determine from the information provided whether the application is eligible for rating.

- All applications shall be required to contain the following:

    a) identification of the applicant;

    b) information on the proposed project;

    c) information adequate to determine whether the applicant is eligible;

    d) information adequate to determine whether the project is eligible;

    e) information indicating whether the applicant or any member of its project team has any unresolved audit findings or has been suspended or debarred from participation in any federal or state housing or community development program;

    f) information on any pending litigation affecting the applicant's ability to carry out the project;

    g) identification of any administrative subcontractor;

    h) a certification that the applicant will comply with federal and state requirements;

    i) a resolution by the governing board of the applicant authorizing the application and the execution of all required documents;

    j) information adequate to determine the experience of the applicant with other federal, state, or local housing or community development programs; and

    k) identification of all members of the project team.

In addition to the information required by subsection (c), applications shall be required to contain the following:

a) a description of the roles, financial structure and all legal relationships of the applicant, developer, owner(s), managing general partner, administrative subcontractor and all other partners in the construction project;

b) the experience of the applicant, developer, owner, and managing general partner in developing the same type of subsidized project as proposed by the application;

c) the readiness of the project to proceed;

d) documentation demonstrating that the project either complies with or is exempt from Article 34 of the California Constitution.

e) the feasibility of the proposed project which shall include the following:

    1) the financial feasibility of the project and compliance with the Uniform Multifamily Regulations and Federal and state Requirements;

    2) a market study, property appraisal and Phase I/Phase II environmental site assessment.

        A. The market study must demonstrate whether sufficient demand exists in the market area to support the proposed project at the projected rents.
        B. The property appraisal must determine the value of the land upon which the proposed project will be developed. If the land is leased, the appraisal must include the fair market value of the lease payments.
        C. The Phase I/ Phase II environmental site assessment must demonstrate whether the property is free from severe adverse environmental conditions.
        D. For projects located on Native American Lands as defined above, appraisals and a Phase I environmental site assessment will be required based on the data available.

f) Any document prepared pursuant to sub sections above shall be prepared by an individual or firm which:

    1) has the appropriate license, when deemed necessary by the Department, and knowledge and experience necessary to competently prepare the document;
    2) is aware of, understands, and correctly employs those recognized methods and techniques that are necessary to produce a credible and complete document;

3) 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 the value and condition of the subject property; and is an independent third party having no identity of interest with the applicant, partners of the applicant, intended partners of the applicant, or with the general contractor.

g) If the applicant is a CHDO, the procedures to ensure the CHDO's effective project control of activities assisted with NHTF funds pursuant to 24 CFR Section 92.300(a)(1).

h) Applications must include a Project Milestone Accomplishment Chart and an Expenditure Schedule that substantiates the project timeline from predevelopment activities to project completion. Additionally, the Expenditure Schedule will demonstrate that grant funds will be expended in compliance with the terms of Standard Agreement. NHTF does not allow for contract extensions.

i) Project Feasibility: – Rental projects must demonstrate compliance with NHTF program requirements and HCD's Uniform Multifamily Regulations (UMRs), California Code of Regulations; title 25, division 1; chapter 7, subchapter 19; commencing with section 8300.

If funds are disencumbered or made available due to an unexecuted standard agreement, the Department may make such funds available (1) to the next highest-ranked unfunded or partially-funded application from the most recent award of funds if the applicant can demonstrate that a proposed project can be successfully implemented and executed or (2) through the next published NOFA.

## NHTF Selection Criteria

There is a total of 1550 application points dispersed through the following selection criteria:

### *Geographic Priorities for the Distribution of Funds (50 Points)*

At least 20 percent of NHTF funds awarded will be reserved for applicants qualifying for Rural Points. Projects will be eligible for Rural Points if located in a census tract that is in a "Rural Area".

Rural Area is defined consistent with section 50199.21 of the California Health and Safety Code. The multiple ways to be qualified as a Rural Area are summarized below:

- The project is located in an area that is eligible for financing under the Section 515 program or successor program of the Rural Development Administration of the United States Department of Agriculture.
- The project is located in a nonmetropolitan area which are areas automatically considered rural. Under the current definition of "metropolitan statistical area" established by the US Office of Management and Budget, effective in 2010, 21 of California's 58 counties qualify as nonmetropolitan: Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Inyo, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, Sierra, Siskiyou, Tehama, Trinity, and Tuolumne.
- The project census tract is not designated by the Census Bureau as being in an area that is considered an Urbanized Area.

(Any inconsistencies in the above rural area definitions shall be resolved in favor of considering the area a rural area.)

However, if there are not sufficient Rural Area applications to meet the 20 percent Rural set-aside requirement, the Department may fund any eligible non-rural applications.

The NHTF funds will be available to all jurisdictions in California, but only projects located in Rural Areas will receive points for the location of their project.

### *Applicant's Ability to Obligate NHTF Funds (450 Points)*

Applicant Capability:

There are two components to the Applicant Capability: 1) Prior Experience component; and 2) Performance Factor component.

Prior Experience points will be awarded for:

- Prior applicant experience in the implementation of federal, state, or local affordable housing or community development projects in the last seven years.
- Prior development team experience in developing the same type of subsidized project as proposed in the application in the last five years.

Performance Factor

Applicants will receive Performance Factor points unless they receive Performance Factor point deductions. In no case shall deduction points exceed the maximum Performance Points specified in the NOFA for this category. The deduction of Performance Factor points can be for any combination of the following factors:

- Factor One: for all missed state HOME program project deadlines of the applicant, developer, owner, and managing general partner including the deadlines for

obtaining all permanent financing, project set-up, construction loan closing, project completion, and expenditure.

- Factor Two: for late or missing state HOME program monthly, quarterly program income, annual, or project completion reports. HCD reserves the right to deduct points even if the annual report is submitted on time but prepared inaccurately.

- Factor Three: if applicants, developers, owners, and managing general partners have in the most recent five-year period made a material misrepresentation of any requirement or fact in an application, project report or other document submitted to the Department including but not limited to that which jeopardizes the Department's investment in a project or places the Department at risk of a monitoring finding. HCD will notify the relevant parties of the proposed penalty and the notification will allow applicants an opportunity to submit an appeal to the Department.

- Factor Four: for noncompliance with monitoring requirements identified in the last five years. There are two distinct sub-categories:

    a) First, applicants, owners, and managing general partners who have not complied with monitoring requirements identified by HCD in the last five years will lose up to 100 points. HCD will notify the relevant parties of the proposed penalty and the notification will allow applicants an opportunity to submit an appeal to the Department.

    b) Second, points will be deducted for the following late reports associated with occupied state HOME rental projects (advance notice will not be provided on the status of these reports):

<u>Non-entitlement Jurisdictions</u>

10 points will be deducted for each late Annual Monitoring Report due to HCD in the most recent period

<u>CHDOs</u>

5 points will be deducted for each late Annual Operating Budget and each late Annual Report due to HCD in the most recent period

***Applicant's Ability to Complete the Proposed Project in a Timely Manner, the extent to which the project has federal, state or Local Project Based Rental Assistance and use of non-Federal Funding Sources (300 Points)***

Readiness: - Examines the project development plan, as well as the status of local government approvals, design progress, and financing commitments. Financing commitments that will garner points include:

- the leverage of non-federal development funding sources; and
- the extent to which the project has federal, state, or local project based rental assistance.

HCD will also examine the following when awarding the readiness points to eligible applicants: market study, appraisal, floodplain analysis, lead-based paint, asbestos and mold reports, preliminary construction cost estimate and scope of work, Physical Needs Assessment, status in obtaining all required local government approvals and design progress.

### *How Well the Application Meets the State's Priority Housing Needs (700 Points)*

Increasing the supply of rental housing for ELI household is a priority housing need. To encourage projects to serve households that are NHTF-eligible (i.e. Extremely Low-Income households), the state will offer state Objective Points for providing deeper affordability and for serving special needs populations, specifically the homeless. See discussion of state Objectives below.

Additional scoring criteria consistent with the state HOME program are as follows:

- Housing Element Compliance - Provides points to cities or counties with an adopted housing element that has been approved by HCD. Projects developed on Indian Reservations or Native American lands, CHDOs, and newly formed cities will receive full points in this rating category.
- Direct HOME Allocation Declined - HOME entitlement jurisdictions that have given up their HOME formula allocation to compete in the state HOME program receive additional points.
- Community Need: - Examines census data such as poverty, race, income, vacancy rates, age of housing stock, housing overcrowding, and home sales prices. Community Need will be evaluated in accordance with the Federal Affirmatively Furthering Fair Housing (AFFH) Final Rule and HCD's Access to Opportunity Initiative(s).
- State Objectives: - NHTF shall award State Objective points for applications that target housing for the homeless population. The Department will also be providing State Objective points for two of its three housing and community development priorities: 1) Homelessness and 2) Access to Opportunity. Further information and guidance on these additional State Objective factors will be provided in the NOFA.

Maximum Per-unit Development Subsidy

Per HUD's Housing Trust Fund Allocation Plan Guide, Sections 91.320(k)(5) and 93.300(a), states may adopt limits used in other federal programs such as HOME. HCD will implement the maximum per-unit development subsidy amount as stated in the state HOME Regulations and defined in the federal HOME program regulations.

Pursuant to federal HOME requirements discussed at: Notice-CPD-15-003-Interim-Policy-on- Maximum-Per-Unit-Subsidy-Limits-for-the-Home-Program, the per-unit subsidy limits for most counties will be capped at 240 percent of the current base limit approved by Congress. California's Home Program Subsidy Limits per unit, effective as of November 18, 2015, are listed in the below table and subject to change pending HUD guidance.

| County Name | 0-Bedroom | 1-Bedroom | 2-Bedrooms | 3-Bedrooms | 4-Bedrooms |
|---|---|---|---|---|---|
| **All counties** | **$141,089** | **$161,738** | **$196,673** | **$254,431** | **$279,286** |

**Other Program Requirements**

Accessibility Requirements

Recipients must agree to meet all applicable requirements, including the mandatory tenant protection provisions found in 12 USC 4568(c)(8)(A) and in Section 93.303 of the NHTF Legislation and Regulations. They must also agree to meet accessibility requirements. These requirements are found in Section 93.301 that includes the requirements of 24 CFR Part 8 and implements Section 504 of the Rehabilitation Act of 1973.

Furthermore, NHTF funded projects are subject to the following provisions in the October 2015 TCAC Regulations, related to accessibility:

- All NHTF projects will adhere to the California Building Code Chapter 11(B), including provisions about the minimum amount of accessibility units as specified in Section 10325(f)(7)(K) of the October 2015 TCAC Regulations.
- For senior NHTF projects, all projects over two stories shall have an elevator (Section 10325 (g)(2)(C)). Elevators must meet all applicable California Building Code Chapter 11(B) requirements and one-half of all units on an accessible path shall have mobility accessible as defined by CBC 11(B). For more information, see TCAC Regulations Section 10325 (g)(2)(B).
- All NHTF projects will make reasonable accommodations for prospective applicants with handicaps, as found in Section 10337(b)(2).

*State Limited Beneficiaries of Preferences*

The state will limit beneficiaries and/or give preference to segments of the extremely low-income population as identified in the HCD's Annual plan and selection criteria.

*Rehabilitation Standard*

The state will not use NHTF funds for rehabilitation of housing, although rehabilitation is allowed by HUD.

*Resale and Recapture Provisions*

The state will not use NHTF funds to assist first-time homebuyers, although first-time homebuyer assistance is allowed by HUD.

*NHTF Affordable Homeownership Limits*

The state will not use NHTF funds for homeownership housing, as allowed by HUD.

*Refinancing of Existing Debt*

The state will not permit NHTF funds to be used to refinance existing long-term debt.

**Certification:** The state has previously included its certification that includes Housing Trust Fund in the Form 424 and State Certification attachment.

**National Housing Trust Fund Allocation Plan Exhibit A**

**California Code of Regulations**

**Title 25, Division 1 Chapter 7**

**Subchapter 19 Commencing with Section 8300**

*Effective date: November 15, 2017*


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Section 8300. Purpose and Scope.

(a) These regulations provide uniform standards and program rules for multifamily rental housing developments assisted by the Department of Housing and Community Development.

(b) When expressly incorporated by reference, some or all of the provisions of this Chapter shall apply to: the Joe Serna, Jr. Farmworker Housing Grant (JSJFWHG) Program (Chapter 7, subchapter 3, commencing with Section 7200); the Multifamily Housing Program (MHP) (Chapter 7, subchapter 4, commencing with Section 7300); and the HOME Investment Partnerships (HOME) Program (Chapter 7, subchapter 17, commencing with Section 8200). These regulations interpret and make specific the following statutes applicable to these programs: Health and Safety Code Division 31, Part 3.2, Chapter 2 (commencing with Section 50517.5), Chapter 6.7 (commencing with Section 50675), and Chapter 16 (commencing with Section 50896).

(c) The 2017 adoptions and amendments to subchapter 19 shall be effective on November 15, 2017 and shall apply prospectively to all standard agreements between the Department and Sponsors that are executed or amended on or after the foregoing effective date and are governed by the authorities set forth in subsection (b). These agreements are subject to the standard contract format referenced in the California State Contracting Manual.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(2), 50675.1(d), 50675.11 and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675, 50896, 50896.1 and 50896.3, Health and Safety Code; and 24 CFR part 92.

Section 8301. Definitions.

The following definitions govern this subchapter.

(a) "Assisted Unit" means a Unit that is subject to the Program's rent and/or occupancy restrictions as a result of the financial assistance provided by the Program, as specified in the Regulatory Agreement.

(b) “CalHFA” means the California Housing Finance Agency.

(c) “Commercial Space” means any nonresidential space located in or on the property of a Rental Housing Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income.

(d) “CPI” means the Consumer Price Index for All Urban Consumers, West Region, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor.

(e) “Debt Service Coverage Ratio" means the ratio of (1) Operating Income less the sum of Operating Expenses and required reserves to (2) debt service payments, excluding voluntary prepayments and non-mandatory debt service. In calculating Debt Service Coverage Ratio, the Department may include all Operating Income, and may exclude Operating Income that cannot be reasonably underwritten by lenders making amortized loans or that is approved by the Department to be deposited into a reserve account to defray projected operating deficits.

(f) "Department" means the Department of Housing and Community Development.

(g) “Developer Fee” means the same as the definition of that term in California Code of Regulations, Title 4, Section 10302.

(h) "Distributions" means the amount of cash or other benefits received from the operation of a Rental Housing Development and available to be distributed pursuant to Section 8314 to the Sponsor or any party having a beneficial interest in the Sponsor or the Project, after payment of all due and outstanding obligations incurred in connection with the Rental Housing Development. Distributions do not include payments for: deferred Developer Fee up to the limit set forth in Section 8312, approved partnership and asset management fees, mandatory debt service, approved reserve accounts established to prevent tenant displacement resulting from the termination of rent subsidies, operations, maintenance, payments to approved reserve accounts, land lease payments to parties that do not have a beneficial interest in the Sponsor entity, or payments for property management or other services as set forth in the Regulatory Agreement for the Rental Housing Development. Distributions include releases to the Sponsor or any other party of reserve funds, where the use of these funds have not been approved by the Department for Project costs.

(i) “Eligible Households” for MHP means “eligible household” as defined in Section 7301, for HOME this term means the same as “low income families” as defined in 24 CFR 92.2, and for JSJFWHG this term means the same as “agricultural household” as defined in Section 7202.

(j) “Native American Lands” means real property located within the geographic boundary of the State of California that meets both the following criteria: it is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more Indian tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and the land may be leased for housing development and residential purposes under federal law.

(k) "Operating Expenses" means the amount approved by the Department that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management, taxes, licenses, and Supportive Services Costs, but not including debt service or required reserve account deposits.

(l) "Operating Income" means all income generated in connection with operation of the Rental Housing Development including rental income for Assisted Units and non-Assisted Units, rental income for Commercial Space or commercial use, laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Rental Housing Development. "Operating Income" does not include security and equipment deposits, payments to the Sponsor for Supportive Services not included in the Department-approved operating budget, cash contributed by the Sponsor, or tax benefits received by the Sponsor.

(m) "Program" means the Department funding program or programs providing assistance to the Project.

(n) "Project" means a Rental Housing Development, and includes the development, the construction or rehabilitation, and the operation thereof, and the financing structure and all agreements and documentation approved in connection therewith.

(o) “Regulatory Agreement” means the written agreement between the Department and the Sponsor that will be recorded as a lien on the Rental Housing Development to control the use and

maintenance of the Project, including restricting the rent and occupancy of the Assisted Units.

(p) "Rental Housing Development" means a structure or set of structures which collectively contains 5 or more Units (except that HOME projects may contain fewer than 5 Units.). “Rental Housing Development” does not include any “health facility” as defined by Section 1250 of the Health and Safety Code or any “alcoholism or drug abuse recovery or treatment facility” as defined by Section 11834.02 of the Health and Safety Code.

(q) “Restricted Unit” means any Assisted Unit and any Unit that is subject to Rent and occupancy restrictions that are comparable to those applicable to Assisted Units. Restricted Units include Units subject to a TCAC regulatory agreement, and all Units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.

(r) "Rural Area" means the same as defined in Section 50199.21 of the Health and Safety Code.

(s) “Sponsor” means the legal entity or combination of legal entities with continuing control of the Rental Housing Development. Where the borrowing entity is or will be organized as a limited partnership, Sponsor includes the general partner or general partners who have effective control over the operation of the partnership, or, if the general partner is controlled by another entity, the controlling entity. Sponsor does not include the seller of the property to be developed as the Project, unless the seller will retain control of the Project for the period of time necessary to ensure Project feasibility as determined by the Department.

(t) “Supportive Services” means social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits.

(u) “Supportive Services Costs” means the costs of providing tenants service coordination, case management, and direct resident and Supportive Services. It includes:

(1) the cost of providing tenants with information on and referral to social, health, educational, income support and employment services and benefits, coordination of community building and

educational activities, individualized needs assessment, and individualized assistance with obtaining services and benefits;

(2) salaries, benefits, contracted services, telecommunication expenses, travel costs, supplies, office expenses, staff training, maintenance of on-site equipment used in services programs, such as computer labs, incidental costs related to resident events, and other similar costs approved by the Department.

(v) “TCAC" means the California Tax Credit Allocation Committee.

(w) "Transitional Housing" means a Rental Housing Development operating under programmatic constraints that require the termination of assistance after a specified time or event, in no case less than 6 months after initial occupancy, and the re-renting of the Assisted Unit to another eligible participant.

(x) “Unit” means a residential Unit that is used as a primary residence by its occupants, including efficiency Units, residential hotel units, and units used as Transitional Housing.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675, 50675.1(c), 50675.2 and 50896.1(a), Health and Safety Code; and 24 CFR part 92.

Section 8302. Restrictions on Demolition.

(a) Proposed projects involving new construction and requiring the demolition of existing residential Units are eligible only if the number of bedrooms in the new Project is at least equal to the total number of bedrooms in the demolished structures. The new Units may exist on separate parcels provided all parcels are part of the same Rental Housing Development meeting the requirements of Section 8303(b).

(b) The Department may approve exceptions to subsection (a) where it determines that such exceptions will substantially improve the livability of the remaining units, or serve some other compelling public policy objective. For example, it may approve a reduction in the number of single room occupancy (SRO) units where necessary to add private cooking and bathing facilities, or a reduction in the number of bedrooms in public housing necessary to meet federal requirements.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50675.4, 50675.7 and 50896.1(a), Health and Safety Code; and 24 CFR Section 92.353(a).

Section 8303. Site Control Requirements and Scattered Site Projects.

(a) At the time of application, a Sponsor must have site control of the of the proposed Project property, in the name of the Sponsor or an entity controlled by the Sponsor, by one of the following means:

(1) fee title, which, for tribal trust land, may be evidenced by a title status report or an attorney's opinion regarding chain of title and current title status;

(2) a leasehold interest on the Project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit, prior to loan closing, compliance with all Program requirements, including compliance with Section 8316;

(3) an enforceable option to purchase or lease which shall extend through the anticipated date of the Program award as specified in the Notice of Funding Availability (NOFA);

(4) a disposition and development agreement with a public agency;

(5) an agreement with a public agency that gives the Sponsor exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties; or

(6) a land sales contract, or other enforceable agreement for the acquisition of the property.

(b) If the Project has multiple contiguous or non-contiguous sites, the configuration of those sites must satisfy all provisions of the statutes governing the applicable Department funding program or programs, and meet the following additional requirements:

(1) all of the developments on the various sites must have a single owner and property manager at the time of the closing of the Department loan, with the exception of any non- residential condominium units;

(2) the debt and associated security instruments of all lenders senior to the Department must be the same for all sites, and multiple senior lenders shall not be allowed;

(3) there must be a single annual report, schedule of rental income, and annual audit of project operations covering all sites;

(4) the Department must be secured against all sites, with lien priority relative to local public agency lenders and use of cash flow available for residual receipt loan payments determined in accordance with Section 8314(a)(2)(A) and (B) of these regulations (with each lender's share of residual receipts proportionate to their share of total Department and local government assistance for the entire multi-site project); and

(5) the Department must be named on applicable insurance policies subject to the Department's approval covering all sites, including but not limited to title insurance policies and other policies with coverage for hazard and liability insurance for the Rental Housing Development, including flood insurance, if applicable. The Department shall be named as a loss payee or an additional insured on all such policies. Such policies also shall provide for notice to the Department in the event of any lapse of coverage and in the event of any claim thereunder. Insurance must be obtained and maintained for the term of the Department's program loan.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(A), 50675.6, 50675.7(c)(3) and 50896.1(a), Health and Safety Code; 42 U.S.C. Section 5304(b); and 24 CFR Section 92.35(a).

Section 8304. Unit Standards.

(a) Restricted Units shall not differ substantially in size or amenity level from non-Restricted Units with the same number of bedrooms, and Units shall not differ in size or amenity level on the basis of income- level restrictions. Restricted Units shall not be segregated from non-Restricted Units, and Units shall not be segregated from each other on the basis of income-level restrictions. Within these limits, Sponsors may change the designation of a particular Unit from Assisted to non-Assisted or from one income-restriction to another

over time. For Projects involving rehabilitation or conversion, the Department may permit certain Units to be designated as exclusively market-rate Units where necessary for fiscal integrity and where all other Program requirements are satisfied.

(b) For the full loan term, the number, size, type, and amenity level of Assisted Units shall not be fewer than the number nor different from the size, type and amenity level described in the Regulatory Agreement.

(c) For projects assisted by MHP, the number of Assisted Units shall equal the number of Restricted Units to the extent allowed by the requirements of Article XXXIV of the California Constitution.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(c), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(A), 50517.5(d)(5), 50517.5(e)(2), 50675.1(c), 50675.2(b), 50675.7, 50675.8 and 50896.1(a), Health and Safety Code; and 24 CFR Sections 92.252(e) and 92.504(c).

Section 8305. Tenant Selection.

(a) Sponsors shall select only Eligible Households as tenants of vacant Assisted Units, using procedures approved by the Department that include:

(1) reasonable criteria for selection or rejection of tenant applications which shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;

(2) prohibition of local residency requirements;

(3) prohibition of local residency preferences, except where there is evidence satisfactory to the Department that the preference as applied will comply with fair housing law and:

(A) where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas, or

(B) where a local ordinance grants a preference to neighborhood residents who have been or are about to be displaced;

(4) tenant selection procedures that include the following components, and that are available to prospective tenants upon request:

(A) selection of tenants based on order of application, lottery or other reasonable method approved by the Department, including priority status under a local coordinated entry (also known as centralized or coordinated assessment, or coordinated access) system established pursuant to federal regulations governing the Continuum of Care program, 24 Code of Federal Regulations, Part 578 (June 6, 2017) hereby incorporated by reference;

(B) does not encourage or require applicants to wait in a physical line;

(C) notification to tenant applicants of eligibility for residency and, based on turnover history for Units in the Rental Housing Development, the approximate date when a Unit may be available;

(D) notification of tenant applicants who are found ineligible to occupy an Assisted Unit of their ineligibility and the reason for the ineligibility, and of their right to appeal this determination;

(E) maintenance of a waiting list of applicant households eligible to occupy Assisted Units and Units designated for various tenant income levels, which shall be made available to prospective tenants upon request;

(F) targeting specific Special Needs Populations ("Special Needs Populations" has the same meaning as defined in Section 7301(s)) in accordance with the Regulatory Agreement and applicable laws; and

(G) affirmative fair housing marketing procedures as specified in the Affirmative Fair Housing Marketing Plan Compliance Regulations of the United States Department of Housing and Urban Development, 24 CFR part 200.620 (a)-(c), or similar affirmative fair marketing housing plan as approved by the Department.

(b) Sponsors shall rent vacant units to households with no less than the number of people specified in the following schedule:

| *Unit Size* | *Minimum Number of Persons in Household* |
|---|---|
| SRO | 1 |
| 0-BR | 1 |
| 1-BR | 1 |
| 2-BR | 2 |
| 3-BR | 4 |
| 4-BR | 6 |
| 5-BR | 8 |

Exceptions:

(1) Live-in aids may be allocated a separate bedroom.

(2) A separate bedroom may be allocated as a reasonable accommodation for individuals with disabilities who have a need for such an accommodation.

(3) For units covered under Housing Choice Vouchers or project-based Section 8 rental assistance contracts, Sponsors may defer to the local housing authority's determination of appropriate unit occupancy.

A Sponsor may assign tenant households to Units of sizes other than those indicated as appropriate in the table and exceptions listed above if the Sponsor reasonably determines that special circumstances warrant such an assignment and the reasons are documented in the tenant's file. The Sponsor's determination is subject to approval by the Department. Through the Project's tenant selection or management plan, a Sponsor may receive advance Department approval of additional categorical exceptions.

(c) The Department may approve exceptions to the requirements of this section for Projects located on Native American Lands, based on the unique legal requirements applicable to Native American Lands.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2), 50675.1(c), 50675.8(a)(1) and 50896.1(a), Health and Safety Code; and 24 CFR Sections 92.303, 92.350 and 92.351.

Section 8306. Tenant Recertification.

(a) The Sponsor shall annually recertify household size and income for Assisted Units.

(b) If at the time of recertification, a tenant's household size has changed and no longer meets the occupancy standards pursuant to the previous section, the Sponsor may require the tenant household to move to the next available appropriately sized Unit.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(c), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2),
50675.1(c), 50675.8(a)(1) and 50896.1(a), Health and Safety Code, and 24 CFR Sections 92.303, 92.350 and 92.351.

Section 8307. Rental Agreement and Grievance Procedure.

(a) All rental or occupancy agreements for Assisted Units are subject to Department approval and shall include:

(1) provisions requiring good cause for termination of tenancy. One or more of the following constitutes "good cause":

(A) failure by the tenant to maintain applicable eligibility requirements under the Program or other eligibility requirements as approved by the Department;

(B) material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:

1. adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;

2. substantially interfere with the management, maintenance, or operation of the Rental Housing Development; or

3. result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;

(C) material failure by the tenant to carry out obligations under federal, state or local law;

(D) subletting by the tenant of all or any portion of the Assisted Unit;

(E) any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided that the Sponsor has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or

(F) for Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing Project.

(2) a provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;

(3) notice of grievance procedures for hearing complaints of tenants and appeal of management action; and

(4) a requirement that the tenant annually recertify household income and size.

(b) The Sponsor shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Sponsors with respect to tenants' occupancy in the Rental Housing Development, and prospective tenants' applications for occupancy. The Sponsor's appeal and grievance procedure shall be subject to Department approval and, at a minimum, shall include the following:

(1) a requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;

(2) procedures for informal dispute resolution;

(3) a right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and

(4) procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.

(c) Neither utilization of, nor participation in any of the appeal and grievance procedures shall constitute a waiver of or affect the rights of the tenant, prospective tenant, or Sponsor to a trial de novo or judicial review in any judicial proceeding which may thereafter be brought in the matter.

(d) This section shall not be construed to pre-empt or supersede requirements established by local government which further limit good cause for eviction.

(e) For Projects located on Native American Lands, the Department may approve exemptions to the requirements of this section, based on the unique legal requirements applicable to Native American Lands.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2), 50675.8(a)(1), 50675.8(a)(2) and 50896.1(a), Health and Safety Code; and 24 CFR Sections 92.253 and 92.303.

Section 8308. Operating Reserves.

The Sponsor shall establish an operating reserve for the purpose of defraying operating shortfalls resulting from Department-approved Operating Expenses exceeding Operating Income beyond the rent-up period.

a) Withdrawals from the operating reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for an eligible withdrawal from the operating reserve within 30 days from documented receipt of the request, that request shall be deemed approved.

b) The initial deposit to the operating reserve shall be funded from development funding sources in an amount determined by the Department, which shall be not less than the total of the following:

4 months of projected Operating Expenses (excluding the cost of on-site Supportive Services coordination), 4 months of required replacement reserve deposits, and 4 months of non-contingent debt service. For projects with tax credits, the requirement shall be 3 months of these items. In setting the initial funding

requirement, the Department shall consider factors including, but not limited to the projected level of Project cash flow, the adequacy of the operating budget, Project location, local market characteristics, the number of sites, and Project design.

c) Sponsor shall fully replace any withdrawals from the Operating Reserve, up to the minimum initial deposit amount specified in subsection (b) above, as may be modified in accordance with subsection (d) or (e) below, using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.

d) In the absence of some extraordinary occurrences, such as litigation affecting the project or construction defects, and upon occurrence of both of the following events, the Department shall reduce the required minimum balance: (i) operation at a debt service coverage ratio of 1.15 or greater for 5 years; and (ii) operation at an Operating Expense coverage ratio of 1.08, where Operating Expense ratio is defined to equal effective gross income, less required replacement reserve deposits and non-contingent debt service, divided by total Operating Expenses, not including the approved cost of Supportive Services coordination.

e) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the Operating Reserve, where the Department determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to direct federal loan or grant programs, including the Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA, the Department may also defer to the operating reserve requirements of these agencies during the time such projects are regulated by a federal agency or CalHFA, and not require deposits in the amounts specified in subsection (b).

f) Where all Project development funding sources are legally precluded from using their funds to capitalize the operating reserve as required by subsection (b), the Sponsor may fund this account out of Operating Income, provided that cash flow is sufficient to reasonably ensure that the required balance can be accumulated within six years of initial occupancy.

g) In no event shall this reserve balance be used to fund limited partner exit costs, except for amounts in excess of the reserve balance required by the Department.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675.5(b)(8) and 50896.1(a), Health and Safety Code.

Section 8309. Replacement Reserves.

The Sponsor shall establish a replacement reserve to repair or replace failed or damaged capital items and to cover extraordinary maintenance expenses, as approved by the Department. Extraordinary maintenance expenses are expenses for infrequent major repairs and replacements of building components too costly to be absorbed by the Project's annual operating budget. In no event shall this reserve be used to fund limited partner exit costs.

(a) Withdrawals from the replacement reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for an eligible withdrawal from the replacement reserve within 30 days of documented receipt of the request, that request shall be deemed approved.

(b) The replacement reserve shall be funded from Operating Income, development sources or a combination of Operating Income and development sources.

(1) For new construction or conversion Projects, the initial amount of annual deposits to the replacement reserve account shall be equal to at least the lesser of 0.6% of estimated construction costs associated with structures in the Project, excluding construction contingency and general contractor profit, overhead and general requirements, or $500 per unit. However, the Department may approve a different amount based on the results of a third-party reserve analysis, which it may require, or other reliable indicators of the need for replacement reserve funds over the initial 20 years of operation, or, in the case of transactions involving restructuring of existing Department loans, 20 years of operations after the restructuring.

(2) For rehabilitation Projects, the initial amount of annual deposits to the replacement reserve account shall be determined by the Department based on the results of a third-party physical needs assessment or other reliable indicators of the need for replacement reserve funds over

the initial 20 years of operation. In its initial underwriting, in the absence of an approved physical needs assessment or other reliable indicators of the need for replacement reserve

funds, the Department may assume that the initial amount of annual deposits shall be $500 per unit.

(3) The Department may periodically adjust the amount of required deposits to the replacement reserve for a particular Project based on the results of reserve analysis or other reliable indicators of the need for replacement reserve funds over time.

(4) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the replacement reserve, where the Department determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to direct federal loan or grant programs, including Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA, the Department may also defer to the replacement reserve requirements of these agencies during the time such projects are regulated by a federal agency or CalHFA.

(5) If the Department requires a reserve analysis because the Department determines the reserve is inadequate due to annual replacement costs exceeding or being reasonably likely to exceed the amounts deposited to the reserve, or due to a request by the Sponsor to adjust the required reserve amount, the analysis must result in a due diligence report that examines the current physical conditions at property(ies), specifies repairs or replacements needed immediately, and budgets for the long-term capital repair and replacement needs during the life of an asset, such as the results of using the Capital Needs Assessment eTool, developed by the U.S. Department of Housing and Urban Development.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(1), 50675.5(b)(8) and 50896.1(a), Health and Safety Code.

Section 8310. Underwriting Standards.

In analyzing Project feasibility, the Department shall, at a minimum, utilize the following assumptions and criteria:

(a) Residential vacancy rates shall be assumed to be 5%, unless a different figure is required by another funding source (including TCAC) or supported by compelling market evidence.

(b) Vacancy rates for Commercial Space shall be assumed to be 50%, except the Department may use the vacancy loss assumption of
the Project's senior lender or equity investor under either of the following circumstances:

(1) where the commercial income is guaranteed by the Sponsor through a long-term master lease and the amount of the Sponsor's annual master lease payment is both:

(A) less than one percent of the Sponsor's cash and cash equivalent current assets; and

(B) less than or equal to the projected commercial income, as evidenced by a market study or appraisal commissioned by the first lien lender or equity investor, and reflected in the final pro forma approved by the first lien lender or equity investor; or

(2) where the Commercial Space has been leased to a national or regional firm widely recognized by the general public, and the term of the lease extends at least five years past the projected date of construction completion.

(c) Total Operating Expenses (not including property taxes or the approved costs of on-site service coordination) shall not be less than those specifically listed in California Code of Regulations, Title 4, Section 10327 as minimum Operating Expenses (without the reduction allowed by those regulations for bond-financed projects). The Department may project higher Operating Expenses where warranted by the experience of comparable properties and particular building characteristics, such as the nature of the tenant population or the level of rehabilitation. Prior to loan closing, the Department may approve total Operating Expenses that are less than those specified in Section 10327, supra, only if the Project has

an extraordinary design feature, such as its own electrical generation system, which results in a quantifiable operating cost savings as documented by a qualified third party.

(d) All Operating Expenses, including property management fees, shall be within the normal market range, as periodically determined by the Department in surveys or based on costs observed in its portfolio.

(e) The first year Debt Service Coverage Ratio shall not be:

(1) less than 1.10:1 or

(2) greater than 1.20:1, except where a higher first-year ratio is necessary to:

(A) project first-year cash flow after debt service and required reserve deposits equal to or less than 12 percent of operating expenses;

(B) meet the requirements of subsection (i);

(C) meet CalHFA's standard underwriting requirements or those of a direct federal lending program; or

(D) project a positive cash flow over 20 years, using the assumptions specified in subsection (i).

In applying the requirements of subsections (e)(1) and (e)(2), the annual MHP Program loan payment of 0.42% will be considered debt service.

The Department may modify the application of these requirements on a case-by-case basis for Projects receiving operating or rental subsidies structured to allow for breakeven operation, or for operation at a level of cash flow that differs from that resulting from application of these requirements in order to meet the cash flow obligations in this subsection.

(f) Balloon payments are not allowed on senior debt, except where the Department's affordability covenant or regulatory agreement (collectively "Use Restriction") is recorded in a position that is senior to the debt with a balloon payment. Any such Use Restriction may include provisions that, upon foreclosure of the debt instrument securing such debt, allow the Use Restriction to be amended to delete any portion of the Use Restriction that is not

necessary to ensure the continued restriction of the project to the same affordability level for all occupants, rents or amounts charged pursuant thereto, reporting requirements not related to tenant occupancy and affordability, and level of operations and maintenance (collectively, the "Affordability Provisions"). The Sponsor may also include an executory provision in the original Use Restriction that immediately limits the effect of the Use Restriction to only those set forth in the Affordability Provisions. Furthermore, in the event project-based rental assistance is terminated, the Affordability Provisions may include a provision allowing rents to increase to the minimum extent required for fiscal integrity, as defined in Section 7301(g), but not in any event shall rents exceed 30% of 50% of area median income, as such area median income is determined by the U. S. Department of Housing and Urban Development, adjusted by bedroom count by TCAC pursuant to 26 U.S. Code Section 42(g)(2)(C) with the annually published TCAC Income Limits and Maximum Rents posted on the TCAC website.

(g) Balloon payments are allowed on junior debt during the term of the Program loan only where the Department determines that the balloon payment will not jeopardize project feasibility.

(h) Variable interest rate debt shall be underwritten at the ceiling interest rate, unless the Department determines that using a lower interest rate assumption will not jeopardize project feasibility.

(i) The Project must demonstrate a positive cash flow for 15 years, using income and expenses increase rate assumptions specified in California Code of Regulations, Title 4, Section 10327. If projected Project income includes rental assistance or operating subsidy payments under a renewable contract, the Department may assume that this contract will be renewed, where the renewal of the rental assistance or operating subsidy is likely.

(j) Where the Department is providing construction-period financing, the minimum budgeted construction contingency shall be 5 percent of construction costs for new construction projects and 10 percent of construction costs for rehabilitation and conversion projects.

(k) Local public agency loans shall not have required payments exceeding 0.5% per year of the original principal loan amount.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(2), 50517.5(e)(2), 50675.7(b)(3) and 50896.1(a), Health and Safety Code; and 24 CFR Section 92.252.

Section 8311. Limits on Development Costs.

(a) Project development costs must be reasonable, as measured by the ratio of the project's total eligible basis to its total adjusted threshold basis limits, calculated at the time of application for Department funds. Both total eligible basis and total adjusted basis limits shall be computed in accordance with TCAC regulations and procedures set forth in Title 4, California Code of Regulations, Sections 10325 - 10327, except as follows:

(1) There shall not be an adjustment of threshold basis limits based on units that will be income and rent restricted at or below certain area median income levels, such as that in Title 4, California Code of Regulations, Section 10327(c)(5)(C) as in effect as of September 2016.

(2) Costs shall be deemed reasonable under this section if the ratio calculated pursuant to the above subsection (a) is less than 160 percent.

(b) If the ratio calculated above in subsection (a) exceeds 170 percent, calculated based on actual development costs following completion of construction, the Sponsor shall incur up to 20 negative points which may, in the Department's discretion, be assessed, and which negative points shall reduce the Sponsor's score by the same amount for future applications to any of the Department's Notice of Funding Availability for any of the Department's programs, and may continue to be repeatedly assessed for any and all successive NOFAs for a period of up to three years following the date on which the Department determined that the cost exceeded the 170 percent limit.

(c) Builder overhead, profit and general requirements shall be limited in accordance with California Code of Regulations, Title 4, Section 10327.

(d) Property acquisition prices shall not exceed appraised value, except where the increment above appraised value is fully covered by junior public agency financing that carries no mandatory debt service.

(e) Proposed Project sites shall not require site development work that is significantly more costly than that typical for other similar projects in the local market area, unless either:

(1) the proposed site acquisition cost together with the site development costs are less than the cost of a typical site together with typical site development costs in the Project's market area; or

(2) there are no other sites available in the market area with a lower combined cost.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675(a),
50675.4(b)(2), 50675.4(c)(1), 50675.5 and 50896.(1)(a), Health and Safety Code.

Section 8312. Developer Fee.

(a) For Projects not utilizing low income housing tax credits, Developer Fee shall not exceed the amount calculated in accordance with subsections (1), (2) or (3) below. The per unit amounts will be adjusted in thousand dollar increments in accordance with changes in the CPI when, following the year 2016, the CPI has indicated the next full thousand dollar increment has been reached.

(1) For new construction Projects and Projects where the contract for the rehabilitation work equals or exceeds $35,000 per Unit:

(A) For the first 30 Units, $26,000 per Unit.

(B) For each Unit in excess of 30, $10,500 per Unit.

(2) For other Projects involving acquisition and rehabilitation where the contract amount for the rehabilitation work, excluding contractor profit and overhead, equals or exceeds $10,500 per Unit and is less than $35,000 per Unit:

(A) For the first 30 Units, $12,000 per Unit.

(B) For each Unit in excess of 30, $5,500 per Unit.

(3) For all other Projects, $2,000 per Unit.

(b) For Projects utilizing 9% competitive low income housing tax credits, Developer Fee payments shall not exceed the amount that may be included in project costs pursuant to California Code of Regulations, Title 4, Section 10327.

(c) For Projects utilizing 4% percent tax credits, Developer Fee payments shall not exceed the lesser of $3,500,000 or the sum of:

(1) the amount that could be included in project costs pursuant to Title 4, California Code of Regulations, Section 10327 if the project was receiving 9% competitive credits; plus

(2) any remaining deferred Developer Fee (payable exclusively from operating income) that is allowed in eligible basis under Title 4, California Code of Regulations, Section 10327 of the TCAC regulations.

(Subsection (c) limits Developer Fee paid from development funding sources.)

(d) The dollar value of any capital contribution of funds or real property made by the Sponsor or an affiliate, as approved by the Department, for Project development costs shall increase the Developer Fee limit by the dollar value of the capital contribution.

(e) The limits set forth in this section shall apply to each Project pursuant to the terms of a program standard agreement, as memorialized in Department loan or grant documents entered into pursuant thereto (the “Original Award”). For any future work performed for the benefit of the Project, to the extent such work was not captured, set forth, or otherwise contemplated in any of the legal documents memorializing terms related to the Original Award, the fees for such new developer work benefiting the Project shall be recalculated in accordance with this section, treating that new work as if it were a separate project.

(f) For projects where less than 25 percent of total units are counted in the determination of maximum Department loan or grant amounts, the Department may defer to the limits on Developer Fees applicable to other public agency project funding sources, to the extent it deems necessary to attract sufficient applications to utilize available Department funding.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.5(b)(5),

50675.8(a)(5) and 50896.1(a), Health and Safety Code.

Section 8313. Program Compatibility.

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

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50406(n), 50675.1(d), 50675.9, 50517.5(a)(1), 50517.5(a)(3), 50896.1(a) and 50896.3(b), Health and Safety

Code. Section 8313.1 Funding Source Surpluses.

(a) If, upon completion of construction, permanent development funding sources exceed actual total development costs the following requirements apply to the resulting funding surplus:

(1) If there are local public agency lenders providing construction–period financing, and the Department is providing only permanent financing, the local lenders may reduce their loans by an amount not exceeding the contingency shown in the loan documents approved by the Department at construction loan closing.

(2) In other cases, or to the extent that the surplus exceeds the budgeted contingency, the Department loan amount shall be reduced by an amount not less than the surplus multiplied by the ratio of the Department's loan amount to total local government assistance, as defined in 8315(c)(3).

(3) As an alternative to (1) or (2), the Department may approve use of surplus funds to reduce tenant rents or for other direct tenant benefits.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.5(b)(5), and 50896.1(a), Health and Safety Code.

Section 8313.2 Special Purpose Entity(ies).

(a) The Department may permit the ultimate borrower or recipient of Department funds to be a special purpose entity formed and controlled by the Sponsor if and only if the Sponsor can demonstrate to the satisfaction of the Department all the following criteria:

(1) The Sponsor will remain as equally liable to the Department as the special purpose entity with respect to the specific performance of the obligations of the loan or grant documents. The Sponsor may be as equally liable to the Department as the special purpose entity with respect to the financial obligations of the loan or grant documents;

(2) The Sponsor shall not intentionally or in effect limit or abrogate its legal liability to the Department by utilizing the special purpose entity; and

(3) There shall be no more than two corporate entities between the Sponsor and the special purpose entity in the corporate control and organizational structure(s). For the purposes of this subsection, “corporate entity” may include a corporation, limited liability company, business trust, limited partnership, or general partnership. For the purposes of determining “control,” the Sponsor must provide, at the very minimum, evidence satisfactory to the Department that the Sponsor (or Sponsors) through direct control of the corporate entities between the Sponsor and the special purpose entity, performs the substantial management duties on behalf of the special purpose entity that involves:

(A) renting, maintaining and repairing the low-income housing property (or if these duties are delegated to an agent, hiring and overseeing the agent’s duties);

(B) acquiring, holding, assigning or disposing of property or any interest in property;

(C) borrowing money on behalf of the special purpose entity, encumbering the special purpose entity’s assets, placing title in the name of a nominee to obtain financing, preparing items in whole or in part, in connection to refinancing, increasing, modifying or extending any obligation; and

(D) determining the amount and timing of distributions to partners and establishing and maintaining all required reserves.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.2(g) and 50896.1(a), Health and Safety Code.

Section 8314. Use of Operating Cash Flow.

(a) Operating income remaining after payment of approved current and prior year operating expenses, reserve deposits and mandatory debt service shall be applied in the following priority order:

(1) First, towards payment of any:

(A) Approved deferred Developer Fee, pursuant to Section 8312;

(B) 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% 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

(C) Supportive Services Costs that these regulations would allow to be paid as operating costs, but that other funding sources do not.

(2) Second, 50 percent to the Sponsor as Distributions and 50 percent to the Department as payments on the Program loan.

(A) If the terms of other public agencies' financing also require payments from remaining cash flow, the

Department may agree to share what would otherwise be its 50 percent share of available cash flow with the

public agencies in amounts proportional to the agencies' respective assistance amounts (total local government assistance, as defined in Section 8315, and total Department loans and grants).

(B) To be consistent with the terms of other public agency loans or leases, the Department may agree to set the percentage payable to the Sponsor at an amount less than 50 percent.

(C) For projects with income from project-based Section 8 or similar project-based rental assistance that is not underwritten by other Project lenders, the Department may reduce the Sponsor's share to an amount equivalent to the amount they would receive if one of the other lender's loan amount was based on an income stream that included the income from the rental assistance.

(b) A Sponsor may not accumulate Distributions from year to year. A Sponsor may deposit all or a portion of permitted Distributions into a Project account for distribution in subsequent years. These future Distributions shall not reduce the otherwise permitted Distribution in those subsequent years.

(c) The limits on payments for Developer Fee pursuant to subsection (a)(1)(A) and for asset management, partnership management, and similar fees pursuant to subsection (a)(1)(B) shall not apply to payments of those fees made from Distributions.

(d) Payment of Distributions, deferred Developer Fee, asset management fees, partnership management fees and similar fees shall be permitted only after the Sponsor submits a complete annual report and operating budget, and the Department determines that the report and budget demonstrate compliance with all Program requirements for the applicable year. Circumstances under which no Distributions, deferred Developer Fee, asset management fees, or partnership management fees, and similar fees shall be paid include:

(1) when written notice of default has been issued by any entity with an equitable or beneficial interest in the Project;

(2) When the Department determines that the Sponsor has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation

of the Rental Housing Development or use of Project income;

(3) if all currently required debt service, including mandatory payments on the Program loan, and Operating Expenses have not been paid;

(4) if the replacement reserve account, operating reserve account, or any other reserve accounts are not fully funded pursuant to Sections 8308 and 8309 and the Regulatory Agreement.

(e) For 2017, the following limits shall apply to total Supportive Services Costs paid as Operating Expenses. These limits shall be increased each year after 2017 at the rate of 2.5 percent per year:

(1) $4,080 per unit per year for supportive housing restricted to individuals or families experiencing chronic homelessness, as defined consistent with Health and Safety Code Section 50675.14;

(2) $3,060 per unit per year

(A) for supportive housing that is not restricted to individuals or families experiencing chronic homelessness as defined pursuant to Health and Safety Code Section 50675.14; and

(B) for units restricted to occupancy by Special Needs Populations under any Department programs (“Special Needs Population” has the same meaning as defined in Section 7301(s));

(3) $1,051 per unit per year for other units where the Sponsor, their affiliate, or a service provider under contract to provide Supportive Services at the Project has both:

(A) qualified staff devoted exclusively to oversight and quality control of resident services in affordable housing, including the Project; and

(B) a system to track and report on tenant outcomes, such as changes in employment status and income;

(4) $250 per unit per year for other units, where the Sponsor, their affiliate, or a service provider under contract does not satisfy the requirements set forth in subsection (e)(3).

(f) The following limits shall apply to Supportive Services Costs paid as Operating Expenses:

(1) The cost of staff supervision shall not exceed 10% of the cost of on-site staff salaries.

(2) Administrative overhead expenses, including accounting and human relations, shall not exceed 15% of the total Supportive Services Costs paid as Operating Expenses.

(g) Sponsors paying Supportive Services Costs as Operating Expenses shall maintain onsite and available for Department inspection records of group activities (including calendars and sign-in sheets) and individualized services and referrals. The Department may also require annual reporting on these and related matters.

(h) For supportive housing, as defined pursuant to Health and Safety Code Section 50675.14, and upon approval by the Department, Sponsors may establish a reserve to cover unexpected shortfalls in revenues to pay for resident services coordination and case management costs. This reserve may be funded through project cash flow available after funding Operating Expenses and other required reserves, or through development sources. The maximum balance shall not exceed three times the per-unit, per- year limits specified in subsection (e).

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.8(a)(5), and 50896.1(a), Health and Safety Code. Section 8315.

Subordination Policy.

(a) The Department may execute and cause to be recorded a subordination agreement subordinating the Department's lien so long as the subordination does not increase the Department's risk beyond that contemplated in the Program loan or grant commitment, as may be amended from time to time, and so long as the subordination would further the interest of the Program.

However, and except for Projects assisted by the U.S. Department of Housing and Urban Development under the Section 811 or Section 202 programs, the Department shall not enter into a subordination agreement or other agreement that contains any of the following:

(1) Any limitation of, or condition on, the Department's exercise of its remedies including, but not limited to issuing a notice of default based on a breach under the Department's loan documents, including a default based solely on a breach of the senior lienholder's documents.

(2) An agreement that the senior lienholder's acceptance of a deed in lieu of foreclosure would result in the senior lienholder taking title to the Rental Housing Development free and clear of the Department's lien(s).

(3) An agreement permitting any modification or supplement of the senior lienholder's lien without the prior written consent of the Department except an agreement that permits a senior lienholder to make advances to: (i) cure a default under a lien with a higher priority than the Department's lien; (ii) pay delinquent taxes on the security property; (iii) pay delinquent hazard or liability insurance premiums for the security property; or (iv) to protect the health and safety of the tenants.

(4) An agreement that would require the Department to undertake additional obligations to any party.

(b) The Department's lien(s) shall not be subordinated to the liens of a local governmental entity unless either:

(1) the total local governmental assistance to the Project is more than twice the amount of the Department's total assistance to the Project (including both loans and grants); or

(2) the total local governmental assistance to the Project is more than the Department's total assistance to the Project (including both loans and grants) and the local government entity manages a portfolio of their own loans that includes over 10,000 rental units with rent and occupancy restrictions.

(c) As used in this section:

(1) “Department's lien” means a deed of trust, regulatory agreement, or other agreement securing payment or performance under an award of Program funds that has been recorded in the office of the recorder of the county in which the Rental Housing Development is located.

(2) “Lien of a local government entity” means a recorded deed of trust, regulatory agreement, reversion, or other recorded agreement securing payment or performance, or a covenant running with the land that affects the maintenance, use, operation, or occupancy of the Rental Housing Development. Except that covenants in favor of a community redevelopment agency or successor agency regarding the use, maintenance, operation, or transferability of a Rental Housing Development including rent limitations or income restrictions on tenants, or prohibiting discrimination, shall not constitute liens subject to the requirements of this section.

(3) “Total local government assistance” means the sum of the original principal amounts of loans and grants made by the local government entity plus other direct project costs paid for by the local governmental entity and approved by the Department including, but not limited to, costs of site preparation, demolition, environmental remediation, and land acquisition. The value of assistance in the form of land write- downs or donations shall be limited to the cost paid by the public agency to acquire the land, less any sales proceeds paid to the agency; or in the case of a leasehold, the cost paid by the public agency less the present value of projected lease payments.

(d) The Department's lien(s) shall not be subordinated to the liens of a lender affiliated with an entity that has an ownership interest in the Project unless a covenant, regulatory agreement, or similar instrument is recorded senior to the lender’s documents that includes the provisions specified in Section 8310(f).

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11 and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(D), 50675(e), 50675.1(b), 50675.6(d), 50896, 50896.1 and 50896.3, Health and Safety Code.

Section 8316. Leasehold Security.

(a) In any Project where the Sponsor proposes to control the Project land through a long-term ground lease, either:

(1) the Regulatory Agreement and other Program documents shall be recorded against both the Sponsor's interest in the Project and the fee interest in the land, and the lease shall have a term remaining at the time of recordation at least equal to the term of the Program loan or grant; or

(2) if the Regulatory agreement and other Program documents are not recorded against the Project's fee interest, the ground lease shall be subject to the Department's approval, must not be subject to any other mortgages, regulatory agreements, use restrictions, or equivalent instruments on the fee interest, and shall contain, or be amended to contain, provisions which:

(A) establish a remaining term of at least ninety (90) years from the date the Department documents are recorded, provided that the Department may accept a lesser term, not less than 65 years, when the lessor is a public agency;

(B) ensure the validity of the lien of the Program loan and/or grant documents on the lease;

(C) ensure that the lease permits the Project to satisfy all Program requirements and permit the Department to enforce the provisions of the Program loan and/or grant without restriction;

(D) expressly consent to the lessee's assignment of the lease to the Department without further consent of the lessor, and permit the Department, after acquisition of the leasehold property, to transfer or assign the lease to a third party without consent of the lessor.

(E) provide that the lessor does not have the right to terminate the lease or accelerate the rent upon lessee's breach without first giving the lessee and the Department reasonable notice and opportunity to cure within a reasonable period;

(F) provide that no termination, modification or amendment to any terms of the lease shall be effective without the written consent of the Department, and any attempt to take such actions would be void without the Department's consent;

(G) require that, in the event of destruction of any improvements on the land, neither the lessor nor the lessee shall terminate the lease if and so long as the lessee or Department pursues reconstruction of the improvements with reasonable diligence;

(H) provide that the Department shall not have any liability for the performance of any of the obligations of lessee under the lease until the Department has acquired the leasehold interest, and then only in accordance with the terms of the lease and only with respect to obligations that accrue during the Department's ownership of the leasehold interest;

(I) provide that neither the lessor nor the lessee, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the lease or otherwise render it unenforceable in accordance with its terms;

(J) provide that the leasehold interest will not merge into the fee in the event that the lessee acquires the reversionary interest in the Project; and

(K) provide that acquisition of the leasehold property by the Department will not result in a termination of the leasehold; and upon such event, obligate the lessor to enter into a new lease having a term at least as long as the term remaining on the lease prior to acquisition by the Department and on substantially the same terms and conditions.

(b) If any other regulatory agreement, use restriction, or equivalent instrument is recorded against the fee, the Department's Regulatory Agreement or covenant must also be recorded against the fee. This subsection shall not apply if the total local governmental assistance to the Project is more than the

Department's total assistance to the Project (including both loans and grants) and the local government entity manages a portfolio of their own loans that includes over 10,000 rental units with rent and occupancy restrictions. For the purposes of this subsection, the phrase “regulatory agreement, use restriction, or equivalent instrument” shall not be interpreted to include any instrument that does not relate in any way to affordability, or any affordability restriction that is not required as a condition of public financing.

(c) Where the lessee and lessor are related or affiliated parties, the Program loan and/or grant documents shall be recorded against both the Sponsor’s interest in the Project and the fee interest in the land.

(d) To the extent consistent with the statutes and regulations governing the Program, the Department may modify or waive the requirements of subparagraph (a)(2) where the lessor is a public agency that demonstrates that it is prohibited by law from meeting the requirements, or where the Project will be located on Native American Lands and there is a legal prohibition on meeting these requirements, and the Department determines that there remains adequate security for the Program loan.

Note: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(d), 50675.11 and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(4)(A), 50675.7, 50896.1 and 50896.3, Health and Safety Code.

Section 8317. Restructuring Transaction Fees.

(a) To cover the Department’s costs of processing any specific Restructuring Transaction as defined in this section, the Department shall charge as authorized by subsections (f) and (n) of Section 50406 of the Health and Safety Code fees to cover the administrative costs incurred for the Department’s staff to negotiate and prepare the legal documents necessary to accomplish the subject Restructuring Transaction.

(b) For the purposes of this section, the term “Restructuring Transaction” means one or more of the following:

(1) extension of the Department’s loan term (or terms, if there are multiple Department loans),

(2) change of ownership (excluding transfer of ownership between two entities controlled by the same parent entity),

(3) a new subordination of the Department's loan or loans to a senior loan or loans, and/or investment of tax credit equity.

Other transactions, such as those limited to the placement of new junior public agency debt without required payments and assignments of limited partner interests, do not constitute a Restructuring Transaction.

(c) The fees charged by this section shall be calculated on a case-by- case basis, and shall be based on the number of work hours necessary for Department staff, at the respective rate for each staff's classification, to negotiate and prepare final executable versions of all legal documents necessary to accomplish the subject Restructuring Transaction.

(d) Notwithstanding subsection (c), the Department shall not be authorized under this section to charge an amount exceeding the amount that the Department charges for the same or similar restructuring activities that the Department performs under other programs administered by the Department in its Related Restructuring Programs, as defined by this section.

(e) For the purposes of this section, the term "Related Restructuring Programs" shall include but not be limited to the restructuring activities authorized by Section 50560(a) of the Health and Safety Code, and shall include any fees set forth by the Department pursuant to the guidelines (published on the Department's website) adopted and authorized pursuant thereto under Health and Safety Code Section 50560.

(f) The legal documents necessary to accomplish the subject Restructuring Transaction shall be subject to the provisions set forth in this subchapter.

Note: Authority cited: Section 50406, Health and Safety Code. Reference: Section 50406, Health and Safety Code.

Section 8318. Federal Loan Extensions.

(a) The term of any existing federal program loan or regulatory agreement enforced by the Department may be extended, if allowed by the subject federal statute. Such extensions shall not be for a period of less than 10 years nor more than 55 years.

Note: Authority cited: Sections 50406(n) and 50896.3(b), Health and Safety Code. Reference: 24 CFR part 92.