


**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR**

651 BANNON STREET
SACRAMENTO, CA 95811
(916) 263-7400 / (FAX) 263-7471
www.hcd.ca.gov



DATE: September 27, 2024 (Amended January 2, 2025)

MEMORANDUM FOR: Interested Parties

FROM: Gustavo Velasquez, Director 

SUBJECT: Removal of Waiver of Sovereign Immunity Requirement in Most HCD Programs

ADMINISTRATIVE NOTICE NO. 24-04

This Administrative Notice establishes a formal written notification of administrative guidelines and policies that affect the operation of the California Department of Housing and Community Development's ("HCD" or "Department") financing programs. This format is used to identify, clarify, and record administrative guidelines and interpretations of public interest.

This memo is meant to accompany the attached Notice of Program Guideline Amendments Regarding Limited Waivers of Sovereign Immunity Omnibus ("Omnibus") published by the California Department of Housing and Community Development ("HCD") on October 1, 2024.

Background

HCD is dedicated to upholding the terms of affordable housing programs and ensuring the responsible use of public funds. Traditionally, HCD required tribal entities to waive their sovereign immunity by signing a Limited Waiver of Sovereign Immunity (LWSI) to establish enforceable contractual obligations. However, after engaging in extensive consultations with tribal representatives and receiving their invaluable feedback, HCD has come to understand that this requirement has posed significant barriers to tribal participation.

Tribal sovereignty is a cornerstone of tribal self-governance, which grants tribes immunity from lawsuits unless they consent to such actions. This principle of immunity is deeply rooted in both the legal framework and the historical context of Tribal Nations. While tribes have the option to voluntarily waive this immunity, many tribes have voiced concerns about being asked to do so in relation to affordable housing programs, which are vital for their self-governance and the well-being of their communities.

In light of these concerns and our ongoing commitment to fostering respectful government-to-government relationships, HCD has reevaluated the need to mandate an LWSI for most of our programs. We have concluded that we can fulfill our compliance obligations through alternative risk mitigation strategies that honor tribal sovereignty by eliminating the requirement for a waiver.

This approach aligns with the Governor's Executive Orders B-10-11 and N-15-19, which affirm the state's dedication to respecting tribal sovereignty, and is further affirmed under AB 1878 (Chapter 266, Statutes 2024), which goes into effect January 1, 2025.

As detailed in the attached Omnibus Amendment, LWSI language has been removed from the Affordable Housing Sustainable Communities, CalHome, Infill Infrastructure Grant, Joe Serna Jr.

Farmworker Housing Grant, Manufactured Housing Opportunity & Revitalization, Multifamily Housing Program, and the Veterans Housing and Homelessness Prevention programs. Moving forward, the LWSI will not be a requirement for any HCD programs, with the exception Homekey+ and Tribal Homekey+. For these programs, tribal entities may still pursue alternative risk mitigation strategies upon request through the [AB 1010](#) waiver process.

HCD remains dedicated to working collaboratively with tribal governments to ensure the effective implementation of housing programs that benefit tribal communities, while respecting their sovereign status and right to self-governance.

Attachment

OMNIBUS MODIFICATION TO PROGRAM GUIDELINES
SUPPORTIVE SERVICES COST CAP LIMITS

This Notice sets forth, clarifies, and repeals certain requirements under multiple affordable housing programs administered by the Department of Housing and Community Development (Department or HCD) as described below. This Notice applies only to the affordable housing programs identified below:

WHEREAS, the Department is authorized to adopt, promulgate, amend, repeal and administer standards, requirements, procedures or guidelines (collectively Program Guidelines) for financial assistance offered pursuant to Department housing finance programs, through the Notices of Funding Availability (NOFAs) and related guidelines as identified below;

WHEREAS, pursuant to the statutory authority referenced below, the relevant Program Guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code;

WHEREAS, the Department is issuing this omnibus notice of amendments for the purpose of:

1. Removing the Limited Waiver of Sovereign Immunity (LWSI) requirement from Program Guidelines.

THEREFORE, by the undersigned execution of the Department's director, the Department hereby adopts and amends into the Program Guidelines the following amendment (in textbox below) thereto, as if such provisions were originally set forth in each publication of the Program Guidelines as detailed below:

All express provisions of the Program Guidelines set forth and listed below that require Indian Tribes or Tribal Entities to provide a Limited Waiver of Sovereign Immunity (LWSI) in order to participate in the Department's affordable housing programs, or that require waivers for personal and subject matter jurisdiction subject to said Program Guidelines, are hereby removed.

The Program Guidelines subject to this addendum are set forth and listed immediately below. Amendments include the removal of indicated language and the replacement of the above amended language as follows:

Affordable Housing and Sustainable Communities (AHSC) (Division 44, Part 1 of the Public Resources Code) Program Guidelines, Appendix B as follows¹:

- [Round 3 Guidelines](#) (effective July 17, 2017; Amended August 17, 2017, October 23, 2017, January 29, 2018, July 31, 2018, and February 24, 2021) and applicable to Notice of Funding Availability (NOFA) issued on October 2, 2017.

Appendix B(b)(2), (3) & (7)

~~(2) Personal Jurisdiction for Tribal Applicants. For applicants that are Indian Tribes or Indian Tribe controlled entities, all such applicants shall provide and execute a limited waiver of sovereign immunity agreeing to the personal jurisdictions of state court.~~

~~(3) Subject Matter Jurisdiction for Restricted Tribal Lands. For applicants proposing projects that are to be within property described in sub-divisions (i)(1), (i)(2), (i)(3), and (i)(4), all such applicants shall cause the subject Indian Tribe to provide and execute a limited waiver of sovereign immunity satisfactory to the Department, agreeing to the subject matter jurisdiction of state court.~~

~~(7) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department regulatory and loan or grant agreements, all of which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdiction which shall require, at a minimum, compliance with State construction standards and regulations.~~

- [Round 4 Guidelines](#) (effective October 29, 2018; Amended February 19, 2019 and February 24, 2021); and applicable to Notice of Funding Availability (NOFA) issued on November 1, 2018.

Appendix B(b)(2), (3) & (7)

~~(2) Personal Jurisdiction for Tribal Applicants. For applicants that are **Federally Recognized Indian Tribes** or Tribal controlled entities, all such applicants shall provide and execute a limited waiver of sovereign immunity agreeing to the personal jurisdictions of state court.~~

~~(3) Subject Matter Jurisdiction for Restricted Tribal Lands. For applicants proposing projects that are to be within property described in sub-divisions (i)(1), (i)(2), (i)(3), and (i)(4), all such applicants shall cause the subject Indian Tribe to provide and execute a limited waiver of sovereign immunity satisfactory to the Department, agreeing to the subject matter jurisdiction of state court.~~

~~(7) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department~~

¹ Any changes to AHSC guidelines remain ineffective until such time as the Strategic Growth Council ratifies or adopts the changes to the AHSC guidelines. Any approvals for a removal of a limited waiver of sovereign immunity will be conditioned on Strategic Growth Council ratification.

~~regulatory and loan or grant agreements, all of which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with State construction standards and regulations.~~

- [Round 5 Guidelines](#) (effective October 31, 2019; Amended December 9, 2019); and applicable to Notice of Funding Availability (NOFA) issued on November 1, 2019.

Appendix B(b)(2), (3) & (7)

~~(2) Personal Jurisdiction for Tribal Applicants. For applicants that are Federally Recognized Indian Tribes or Tribal controlled entities, all such applicants shall provide and execute a limited waiver of sovereign immunity agreeing to the personal jurisdictions of state court.~~

~~(3) Subject Matter Jurisdiction for Restricted Tribal Lands. For applicants proposing projects that are to be within property described in sub-divisions (i)(1), (i)(2), (i)(3), and (i)(4), all such applicants shall cause the subject Indian Tribe to provide and execute a limited waiver of sovereign immunity satisfactory to the Department, agreeing to the subject matter jurisdiction of state court.~~

~~(7) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department regulatory and loan or grant agreements, all of which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with State construction standards and regulations.~~

- [Round 6 Guidelines](#) (effective February 24, 2021); and applicable to Notice of Funding Availability (NOFA) issued on February 26, 2021 as amended on October 14, 2021.

Appendix B(b)(2), (3) & (7)

~~(2) Personal Jurisdiction for Tribal Applicants. For applicants that are Federally Recognized Native American Tribes or Tribal controlled entities, all such applicants shall provide and execute a limited waiver of sovereign immunity agreeing to the personal jurisdictions of state court.~~

~~(3) Subject Matter Jurisdiction for Restricted Tribal Lands. For applicants proposing projects that are to be within property described in sub-divisions (i)(1), (i)(2), (i)(3), and (i)(4), all such applicants shall cause the subject Native American Tribe to provide and execute a limited waiver of sovereign immunity satisfactory to the Department, agreeing to the subject matter jurisdiction of state court.~~

~~(7) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department regulatory and loan or grant agreements, all of which may be accomplished by~~

~~incorporating by reference a separately executed sovereign immunity waiver instrument. The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with State construction standards and regulations.~~

- [Round 7 Guidelines](#) (effective December 15, 2022); and applicable to Notice of Funding Availability (NOFA) issued on January 30, 2023 as amended on March 15, 2023.

Appendix B(b)(2) & (6)

~~(2) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.~~

~~(6) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department regulatory and loan or grant agreements, all of which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The Recipient shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with State construction standards and regulations or with respect to tribal housing Projects in Indian Country, compliance with tribal construction standards and regulations that are at least as stringent as State construction standards and regulations, subject to the Department's review and satisfaction[.]~~

- [Round 8 Guidelines](#) (effective December 14, 2023) and applicable to Notice of Funding Availability (NOFA) issued January 19, 2024.

Appendix B(b)(2) & (6)

~~(2) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, **Project**, or any matters arising from either of them is in state court and the **Department** has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.~~

~~(6) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the **Department** Standard Agreement, and all other relevant **Department** agreements memorializing or securing the awards of funds, which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The **Tribal Entity** shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with state construction standards and regulations or with respect to tribal housing **Projects in Indian Country**, compliance with tribal construction standards and regulations that are at least as stringent as state construction standards and regulations, subject to the **Department's** review and satisfaction[.]~~

CalHome (Division 31, Part 2, Chapter 6, of the Health and Safety Code) Program Guidelines, Appendix B – Tribal Eligibility, Section C, as follows:

- Final [Guidelines](#) (effective December 30, 2022); and applicable to Notices of Funding Availability (NOFA) issued January 6, 2023 as amended on June 6, 2023, and February 29, 2024.

Appendix B(b)(2) & (c)

~~(2) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.~~

~~(c) — Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department regulatory and Loan or Grant agreements, all of which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with state construction standards and regulations or, with respect to tribal housing Projects in Indian Country, compliance with tribal construction standards and regulations that are at least as stringent as state construction standards and regulations, subject to the Department’s review and satisfaction.~~

Infill Infrastructure Grant Program (IIG) (Division 31, Part 12.5 of the Health and Safety Code) Program Guidelines, Section 200(e)(3)(B) as follows:

- MFSN Round 1 Assembly Bill (AB) 434 [IIG Qualifying Infill Projects Final Guidelines](#) effective March 30, 2022, and applicable to Notice of Funding Availability (NOFA) issued on March 30, 2022 and as amended on June 10, 2022.

Section 200(e)(3)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

- MFSN Round 2 Assembly Bill (AB) 434 [IIG Qualifying Infill Projects Guidelines](#) (effective May 18, 2023) and applicable to Notice of Funding Availability (NOFA) issued on May 18, 2023.

Section 200(e)(3)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

Joe Serna, Jr. Farmworker Housing Grant Program (Serna or FWHG) (Division 31, Part 2, Chapter 3.2, of the California Health and Safety Code)

- MFSN Round 1 Assembly Bill (AB) 434 [FWHG Program – Multifamily Final Guidelines](#) (effective March 30, 2022) and applicable to Notice of Funding Availability (NOFA) issued on March 30, 2022 and as amended on June 10, 2022.

Section 202(g)(3)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

- MFSN Round 2 Assembly Bill (AB) 434 [FWHG Program – Multifamily Final Guidelines](#) (effective May 18, 2023) and applicable to Notice of Funding Availability (NOFA) issued on May 18, 2023.

Section 202(g)(3)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

Joe Serna, Jr. Farmworker Housing Grant Homeownership Program (Division 31, Part 2, Chapter 3.2 of the Health and Safety Code)

- Final [Guidelines](#) (effective December 30, 2022) and applicable to Notice of Funding Availability (NOFA) issued January 6, 2023 and as amended on June 6, 2023, and February 29, 2024.

Appendix B(b)(2) & (c)

~~(2) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.~~

~~(c) Minimum Requirements for Sovereign Immunity Waivers. Sovereign immunity language shall be included in the Department Standard Agreement, and all Department regulatory and Loan or Grant agreements, all of which may be accomplished by incorporating by reference a separately executed sovereign immunity waiver instrument. The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instruments for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with state construction standards and regulations or, with respect to Tribal housing Projects in Indian Country, compliance with Tribal construction standards and regulations that are at least as stringent as state construction standards and regulations, subject to the Department's review and satisfaction.~~

Manufactured Housing Opportunity & Revitalization Program (Division 31, Part 2, Chapter 11 of the Health and Safety Code) Program Guidelines, Section 203.1, Threshold Requirement for Tribal Entities Assistance as follows:

- [Round 1 Guidelines](#) (effective May 2, 2023, amended November 9, 2023) and applicable to Notices of Funding Availability (NOFA) issued May 2, 2023 as amended on November 9, 2023.

Section 203.1(e)(2), Section 203.1(f) & Section 204(b)

~~(2) Personal and Subject Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, project, or any matters arising from either of them is in state court and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in state court.~~

Appendix B – Tribal eligibility, Section C

~~(f) Limited sovereign immunity waiver language shall be included in the Department Standard Agreement, and all Department regulatory and Loan or grant agreements, all of which may be accomplished by incorporating by reference in a separately executed limited sovereign immunity waiver instrument[.]~~

~~(b) The Applicant shall also provide or obtain a separate limited waiver of sovereign immunity instrument for both personal and subject matter jurisdictions which shall require, at a minimum, compliance with state construction standards and regulations or, with respect to Tribal housing Projects in Indian Country, compliance with Tribal construction standards and regulations that are at least as stringent as state construction standards and regulations, subject to the Department's review and satisfaction.~~

Multifamily Housing Program (MHP) (Division 31, Part 2, Chapter 6.7 of the Health and Safety Code) Program Guidelines, Section 7302(i)(3)(B) as follows:

- MFSN Round 1 Assembly Bill (AB) 434 [MHP Final Guidelines](#) (effective March 30, 2022 and amended May 5, 2022) and applicable to Notice of Funding Availability (NOFA) issued on March 30, 2022 and as amended on June 10, 2022.

Section 7302(i)(3)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

- MFSN Round 2 Assembly Bill (AB) 434 [MHP Final Guidelines](#) (effective May 18, 2023) and applicable to Notice of Funding Availability (NOFA) issued May 18, 2023.

Section 7302(i)(3)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

Veterans Housing and Homelessness Prevention (VHHP) (Division 4, Chapter 6, Article 3.2 of the Military and Veterans Code) Program Guidelines, Section 201(s)(3)(B).

- MFSN Round 1 Assembly Bill (AB) 434 [VHHP Final Guidelines](#) (effective March 30, 2022) and applicable to Notice of Funding Availability (NOFA) issued on March 30, 2022 and as amended on June 10, 2022.

Section 201(s)(4)(B)

~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

- MFSN Round 2 Assembly Bill (AB) 434 [VHHP Final Guidelines](#) (effective May 18, 2023) and applicable to Notice of Funding Availability (NOFA) issued on May 18, 2023.

Section 201(s)(3)(B)

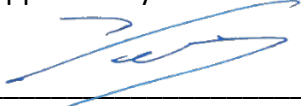
~~(B) Personal and Subject Matter Jurisdiction. Personal and subject matter jurisdiction in regard to the Standard Agreement, Project, or any matters arising from either of them is in a court of competent jurisdiction and the Department has received any legal instruments or waivers, all duly approved and executed, as are or may be legally necessary and effective to provide for such personal and subject matter jurisdiction in a court of competent jurisdiction.~~

Applicability

This Notice is effective immediately. Any new awards issued in connection with the affordable housing programs identified above after the date of this Notice will not be subject to LWSI requirements. For existing awards in connection with the aforementioned affordable housing programs made prior to the release of this Notice, Standard Agreements will be executed to reflect removal of LWSI requirements of the Program Guidelines under which the original award was made, or shall be amended to remove this requirement in the Department’s sole and absolute discretion.

**** The Homekey/Tribal Homekey affordable housing program is an exception to this Notice and will continue to utilize the LWSI requirement. Unlike other Department programs that utilize a reimbursement model to ensure compliance prior to funds being disbursed, the Homekey program advances a sizable amount of state dollars to recipients prior to project completion. As such, the Department will continue to utilize the LWSI requirement in Homekey/Tribal Homekey to ensure the timely delivery of affordable housing for the agreed-upon term.**

The foregoing is subject to the Homekey/Tribal Homekey exception, as well as to any necessary approval and/or ratification by the Strategic Growth Council in connection with an AHSC award or Standard Agreement.

Approved by:  _____ Gustavo Velasquez, Director	9/27/24 and 1/2/25 _____ Date
--	-------------------------------------

