DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF STATE FINANCIAL ASSISTANCE
651 BANNON STREET
SACRAMENTO, CA 95811
www.hcd.ca.gov

DATE:	**October 10, 2024**
MEMORANDUM FOR:	Multifamily Finance Super NOFA Stakeholders and Interested Parties
FROM:	Gina Ferguson, Branch Chief Program Design and Development Division of State Financial Assistance
SUBJECT:	Proposed Changes to Multifamily Finance Super NOFA Guidelines Request for Public Comment

The California Department of Housing and Community Development (Department or HCD) is soliciting comments on proposed amendments to the Multifamily Finance Super NOFA (MFSN) Guidelines for the following programs:

- Multifamily Housing Program (MHP)
- Joe Serna, Jr. Farmworker Housing Grant Program (FWHG or Serna)
- Infill Infrastructure Grant Program (IIG) – Qualifying Infill Projects

Amendments would modify the current guidelines for these three programs. When final, these changes will become effective in the MFSN Round 3 Notice of Funding Availability (NOFA) scheduled for release in February 2025.

All comments must be submitted electronically to SuperNOFA@hcd.ca.gov no later than Thursday October 31, 2024. To the extent possible, please include the guidelines section and subsection number applicable or general topical description as a heading to each comment. If you are providing a signed PDF letter, to the extent possible, please also include a Microsoft Word document or similar electronic format that allows for easier staff transcription.

BACKGROUND

In accordance with Assembly Bill 434 (Chapter 192, Statutes 2020), the Multifamily Finance Super NOFA (MFSN or Super NOFA) streamlined four of HCD's state housing financing programs through consistency among program guidelines, consolidated defined terms, alignment with CDLAC and TCAC, and a single scoring system. The 2025 NOFA will be the third round of funding. VHHP program funds have been nearly all awarded, and the current remaining funds are not sufficient to provide a significant level of financing for a single project. As a result, the VHHP program will not be included in the upcoming MFSN NOFA.

Prior to the 2025 MFSN NOFA, the Department intends to make program changes to the MFSN Guidelines for these three programs based on recent statutory changes, stakeholder feedback, and continued advancement of state policy priorities. As part of this process, the Department is soliciting public comment on proposed changes as summarized below. For reference, current MFSN Guidelines and the 2023 NOFA are available on the Department's website at the following link: Super NOFA | California Department of Housing and Community Development. Please refer to the current MFSN Guidelines and Uniform Multifamily Regulations for complete definitions of any capitalized terms used throughout this document.

SUMMARY OF PROPOSED CHANGES

This memo summarizes the more notable proposed changes for the 2025 MFSN Guidelines. These changes advance the goals of producing critically needed affordable housing, reducing time and cost to develop housing, and prioritizing equitable state policy objectives. The draft MFSN Guidelines (MHP, FWHG, and IIG) with proposed changes in strikethrough and underline format are available for review and public comment and located on the MFSN webpage.

For reference, each proposed change is identified by the MFSN program it will impact and a corresponding section reference to the current MFSN Guidelines. Please note, letter and number formats below are for delineation purposes only and do not correspond to any guidelines' section paragraph lettering or numbering.

1. **Eligible Project**

   All applicable MFSN Guidelines (MHP, FWHG, IIG)

   a. Removal of Article XXXIV compliance requirement references due to enactment of Senate Bill 469 (2023). MHP Section 7302(h), FWHG Section 202(h), with corresponding changes in MHP Sections 7314(f) and 7322(a)(14), FWHG Sections 303(f) and 501(a)(14), and Appendix A Defined Terms

   b. Removal of the requirement for Tribal Entities to limit occupancy to Tribal households. This was established to coincide with the 2022 NOFA's Tribal Entity target. The target was discontinued due to lack of applicants, and funding transferred to the Tribal Multifamily Super NOFA. MHP Section 7302(i)(2), FWHG Section 202(g)(2), IIG Section 200(e)(2)

   c. Removal of the requirement for Tribal Entities to waive personal and subject matter jurisdiction. MHP Section 7302(i)(3)(B), FWHG Section 202(g)(3)(B), IIG Section 200(e)(3)(B)

   IIG Guidelines

   d. Removal of the requirement that each NOFA identify counties that are nonmetropolitan, nonmetropolitan with micropolitan areas, suburban, and metropolitan. Identification by county of these classifications is not of practical value to applicants because many counties are comprised of multiple classifications. A project site's location determines its classification. IIG Section 200(b)(3)(G)

2. **Eligible Sponsor**

All applicable MFSN Guidelines (MHP, FWHG)

a. Proposed changes clarify a Sponsor's equivalent experience and provide a metric for determining equivalent project size. MHP Section 7303(d), FWHG Section 203(d)

b. Acknowledgment of the ability to replace a Sponsor prior to the end of the regulatory period, and that this ability lies within the Department's sole and absolute discretion. MHP Section 7303(d)(1)(B), FWHG Section 203(d)(1)(B)

c. Clarification of eligible Sponsor requirements when there are co-Applicants and added detail to the process for Sponsor changes with co-Applicants. MHP Section 7303(h) and (i), FWHG Section 203(h) and (i)

3. **Threshold Requirements**

All applicable MFSN Guidelines (MHP, FWHG, IIG)

a. Proposed change to eliminate underwriting to both proposed and restricted rents during an application's feasibility review. The change retains underwriting pursuant to UMR Section 8310 to restricted rents (the maximum targeted Area Median Income rent less utility allowance), which is consistent with underwriting that occurs post-award and with rent restrictions monitored pursuant to the Department's regulatory agreement. MHP Section 7303.1(g), FWHG Section 204(g)

b. Clarification that the threshold requirement for local land use approvals is documentation of the status, not complete approval. MHP Section 7303.1(h), FWHG Section 204(h)

c. Clarification of Environmental Site Assessment (ESA) reporting. MHP Section 7303.1(i), FWHG Section 204(i), IIG Section 202(h)

d. Additional legal citations added to clarify preference policies for occupancy. MHP Section 7303.1(q), FWHG Section 204(r)

e. Proposed change to require commitments for all construction and permanent financing with the exception of bond financing and tax credits. MHP Section 7303.1(r), FWHG Section 204(t), IIG Section 202(n)

Serna Guidelines

f. Clarification that the tenant service amenities requirement in MHP Guidelines Section 7303.1(m) also applies to applications requesting FWHG funds. FWHG Section 204(s)

IIG Guidelines

g. Clarification that right of way easements and encroachment permits are not required to be completed prior to application, and movement of this language to Section 205. IIG Section 202(l)(2)

4. **Eligible Use of Funds**

MHP Guidelines

a. Addition of Capitalized Operating Subsidy Reserves (COSRs) provided in conjunction with MHP capital funds for Permanent Supportive Housing in Special Needs project types and capitalized reserves for Supportive Services as eligible uses of funds. MHP Section 7304(b)(13) and (14) and Appendix A Defined Terms

IIG Guidelines

b. Removal of residential structured parking and parking lifts as eligible uses of funds. IIG funds are to be used for infrastructure improvements that further state infill priorities. To align with the statutory intent of the program and with Assembly Bill 894 (2023), the proposed change removes residential structured parking that does not also serve a transit station as an eligible use of funds. IIG Guidelines Section 203(b)(4)

5. **MHP Capitalized Operating Subsidy Reserve (COSR)**

Section 7304.1 (and Section 7310.1) are new MHP Guidelines sections that implement Assembly Bill 2483 (2022). AB 2483 was enacted to implement various changes to the MHP program to improve access to Supportive Services and increase operating support for MHP projects serving persons experiencing homelessness and other special needs populations. Section 7304.1 outlines the requirements for MHP COSRs. Several existing MHP Guidelines sections also include corresponding proposed changes, including sections 7307, 7308, 7312.1, 7322, and 7324. The Appendix A Defined Terms also includes a definition for Capitalized Operating Subsidy Reserves. The following summarizes the substantive proposals.

MHP Guidelines Section 7304.1 (new section)

a. COSRs will be available for Special Needs Projects to assist units at 30 percent AMI and below. COSRs will be provided in the form of a grant.

b. This section sets forth the baseline per-unit and per NOFA subsidy limit for COSRs. If a project's projected 20-year operating deficit is less than the per unit calculation (as verified by the Department's underwriting), the COSR will be sized to the 20-year operating deficit. These limits were derived based on an analysis of award levels within the No Place Like Home (NPLH) program. All rents, including COSR-assisted units, will be underwritten based on restricted rents. The COSR will be sized based on the restricted rents of the AMI targeting selected by the Sponsor.

c. If the maximum COSR amount is insufficient to enable the project to avoid a negative cash flow for 20 years, the application must document other means for addressing the shortfall in addition to relying on the COSR and must demonstrate positive cash flow for the full 20-year underwriting period.

d. To be considered for a COSR, this section also requires that Sponsors demonstrate they have first identified and requested available possible federal, state, and local sources of rental assistance and other operating assistance.

e. Stacking of rental or operating subsidies on the same Assisted Unit is permitted. Where an MHP COSR is involved, the MHP COSR funds will be reduced first to ensure that a Unit is not over-subsidized.

f. The Department may adjust the per-unit subsidy limits or NOFA limits for the COSR from time to time as may be necessary to achieve Department policy objectives, including, but not limited to, adjustments based upon increases in the Consumer Price Index, or adjustments based on NOFA demand or available funds. Any adjustments to the COSR limits will be published with the NOFA. Any changes will be applicable to new awards and not to existing contracts or loan or grant agreements or pending contracts.

g. Refer to the proposed draft MHP Guidelines document for a complete list of operating expenses that cannot be paid for through the COSR. Of particular note, COSRs cannot be used for debt service other than the Department's annual monitoring fee for its loan. COSRs cannot be used for deposits to reserves beyond those required by the Department under the UMRs, including reserves required by other Project financing sources. COSRs also cannot pay developer fees, and cannot be used for asset management and partnership fees unless these AM/PM fees cannot be paid for from cash flow from the non-Assisted Units, and unless all other eligible COSR expenses have been paid, and the Project is still within the 5 percent annual draw cap. Under no circumstances may COSR funds be used for or in connection with a limited partner buyout, substitution, or assignment of ownership interest, neither during an operating (fiscal) year, nor for any potential restructure or resyndication transaction.

h. The Department will hold all project COSR funds in a subaccount. Compared to the UMR-required operating reserve, COSRs typically will be much larger. It is therefore in the Department's best interest to hold and disburse these reserves to ensure that prior to disbursement the funds are being used for eligible COSR expenses, and to ensure that they will be available to the Project for a minimum of 20 years. This approach is consistent with how COSRs are administered in the NPLH program.

i. Refer to the proposed draft MHP Guidelines document for complete distribution and disbursement requirements. The initial COSR disbursement may be requested during the Department's permanent loan closing process for reimbursement of operating revenue shortfalls attributable to the COSR-assisted units during the initial operating year, including the rent-up period after receipt of the Certificate of Occupancy. The maximum annual disbursement is 5 percent of the COSR Award, with an increase to 7 percent in the Department's sole discretion. The allowance for an initial disbursement covering revenue shortfalls as set forth above is necessary since this is likely the time when the Project will have the most vacancies among the COSR Assisted Units and is therefore likely to experience higher revenue shortfalls. Nonetheless, to ensure that the COSR can last for a minimum of 20 years, this initial disbursement will be limited to 24 months of shortfalls covering not more than 14 percent of the total COSR amount. This should be a sufficient timeframe to capture most Project initial rent-up expenses. The drawdown limit of 7 percent per year during this period is consistent with what the Department will allow in periods of higher-than-normal deficits.

For all other COSR disbursements, the Department may not disburse more than 5 percent of the total COSR Award made to a Project per year, except that in any given year where the operating deficit attributable to the COSR Assisted Units exceeds this amount, the Department may, in its sole discretion, increase the disbursement to up to 7 percent of the total COSR Award.

Keeping each disbursement at 5 percent or less per year will improve the chances that the COSR can last for its projected 20 years from initial occupancy. Adjustments to a Project's disbursement percentage may be made over time, to account for years in which the operating deficit may warrant distributing up to 7 percent in a given year.

j. All COSR disbursements for eligible costs will be verified based on the results of an independent bifurcated audit for the Project prepared by a Certified Public Accountant for the prior operating year, as reviewed and approved by the Department in accordance with the requirements noted in the Project's regulatory agreement and the Department's current audit requirements. The bifurcated audit must distinguish actual annual income and expenses for the COSR Assisted Units and the other Project Units in order to determine the amount of any operating deficit specifically attributable to the COSR Assisted Units.

   The use of a bifurcated audit to distinguish between the COSR Assisted Units and those Units not assisted by the COSR will be necessary to verify how much the Project was eligible to draw in a given year, and for what expenses. This practice of requiring bifurcated audits is consistent with what is currently being done in the NPLH program and in other Department programs where the Department is administering an operating subsidy.

k. This section also details the Department's options in the event that the annual bifurcated audit shows that the Project had less of an operating deficit attributable to the MHP COSR Assisted Units than was disbursed from the COSR for that operating year. The intent behind these options is to ensure that the COSR can last for a minimum of 20 years.

It also gives the Department the authority to re-calculate a Project's annual COSR disbursement cap every 5 years in order to ensure that the COSR can last a minimum of 20 years. A periodic recalculation of this percentage may be necessary if the Project had several years where it requested more than 5 percent of its COSR amount. Likewise, this subsection also provides that the Department will hold the COSR for longer than 20 years in the event there is still money in a Project's COSR after Year 20 and may implement a similar process to determine the amounts available for allocation after Year 20.

6. Cost Limitations

All applicable MFSN Guidelines (MHP, FWHG)

a. Developer fee limits are proposed to continue to align with current TCAC developer fee limits. For the increased limit for regulated special needs populations, these units must meet MFSN Guidelines requirements for Special Needs Population(s) as defined by MFSN. For acquisition and rehabilitation applications utilizing 4 percent tax credits, the proposed changes include clarification that developer fee calculated from acquisition basis is limited to 5 percent of unadjusted eligible acquisition basis. MHP Section 7305(b), FWHG Section 206(b)

b. The developer fee limit for non-tax credit projects is proposed to be simplified and align with the calculation for 9 percent tax credits. MHP Section 7305(b)(2), FWHG Section 206(b)(2)

7. Appraisal and Market Study Requirements

All applicable MFSN Guidelines (MHP, FWHG)

a. The first proposed change allows acquisition rehabilitation applications subject to regulatory affordability restrictions to provide the abridged market study permitted by TCAC regulations. The second proposed change requires the market study to specify any of those with Project type or target population preference or restrictions, and document that there is sufficient demand for project type or target population in the geographic area where the proposed project is or will be located. MHP Section 7309(c), FWHG Section 210(c)

8. MHP Medi-Cal Funded Supportive Services

MHP Guidelines Section 7310.1 (new section)

This new MHP Guidelines section addresses the requirements and incentives available for projects that choose to partner with service providers funded by Medi-Cal through the Program of All Inclusive Care for the Elderly (PACE), Assisted Living Waiver (ALW), and Home and Community Based Alternatives (HCBA) waiver programs. Incentives include higher loan limits and higher per unit subsidy limits for on-site Supportive Services space. Note that projects do not need to partner with Medi-Cal Supportive Services providers to be eligible to receive a COSR under the requirements set forth in Section 7304.1, or to be eligible for the higher per unit caps for Supportive Services paid for through the project operating budget under the new caps set forth in Section 7313.

a. Definitions needed to implement the requirements of this section are proposed within the section and Appendix A. Some of these defined terms are summarized below. Refer to the proposed draft MHP Guidelines document for complete definitions applicable to this section.

b. To be eligible for higher loan limits, in accordance with statute, a project must set aside at least 20 percent of the project's units for Eligible Individuals (if the project includes more than 100 units, no more than 50 percent of the project's units will be set aside for Eligible Individuals). Eligible Individuals are individuals or head of households experiencing homelessness as defined (includes persons exiting institutions as defined under statute) who are eligible to receive Qualifying Services through PACE, ALW, or HCBA.

c. Qualifying Units means MHP-Assisted units set aside under the provisions of this section for Eligible Individuals. These individuals may be single-person households or may reside with others. Qualifying Units must comply with the Home and Community Based Settings Final Rule as set forth in 42 CFR Sections 441.301 and 441.710 and the Medi-Cal Statewide Transition Plan.

d. Applicants must enter into a written agreement with an Eligible Service Provider as defined (a Supportive Services provider approved by DHCS) to offer Qualifying Services to Eligible Individuals. This executed agreement must be submitted with the MFSN application.

e. The Sponsor has an obligation to ensure that a partnership with an Eligible Service Provider is ongoing so that Qualifying Services continue to be offered to Eligible individuals residing in the Project. This does not mean that the services have to be offered on-site. It also does not mean that there cannot be a change in Eligible Service Providers or the Qualifying Services over time. The minimum term of the executed written agreement between the Sponsor and the Eligible Service Provider must be five years with the option to renew. However, the Sponsor's obligation to ensure Qualifying Services are available to Eligible Individuals, on-site or off-site, extends through the term of the Program Loan.

f. Per AB 2483, use of a Coordinated Entry System (CES) for referrals is required. The Department is still considering whether it is necessary and permissible to offer persons exiting institutions who were homeless upon entering the institution the option of use of an alternate referral system. Pursuant to AB 2483, individuals who were homeless when entering the institution are considered homeless upon discharge regardless of the length of stay in the institutional setting.

g. The Sponsor must work with local partners to ensure that referrals from CES are made in a timely manner, that initial assessments for eligibility for Qualifying Services are made in a timely manner, and that assistance with application preparation and other needed move-in assistance is provided in a timely manner. This includes working with Eligible Service Providers prior to submission of the MHP application and at other times to ensure that the income limits for the Qualifying Units are within the income limits for the Qualifying Services (e.g. Medi-Cal income limits).

h. The Sponsor must also: (1) meet with the Service Provider as needed to discuss any issues jeopardizing housing stability that may be arising with each Eligible

Individual in an effort to try to prevent evictions and to assist Eligible Individuals in meeting their goals; (2) meet with DHCS and HCD as needed following the MHP award to discuss the above requirements, lease up procedures, and other issues necessary to ensure a successful partnership with Eligible Service Providers.

i. Services provided must be consistent with the core components of Housing First.

j. An exemption from MHP Supportive Services plan requirements may be available for units receiving Qualifying Services; however, the Project must continue to meet the staff to client ratios set forth in 7310 (b) (11) for case management services that are funded through the project budget. The Project must also continue to have a Lead Service Provider meeting the requirements of Section 7302 who will act to ensure service access and coordination amongst all the Project's service providers.

k. Some or all of the incentives offered in a given NOFA pursuant to the requirements of this Section may be temporarily suspended if the Department determines in consultation with DHCS that access to Qualifying Services will be temporarily suspended or limited due to such things as long Qualifying Services enrollment waiting lists or other factors.

l. Following the first year of project operations, an independent program evaluator will evaluate the effectiveness of Medi-Cal partnerships provided through the requirements of this Section using specified tenant outcome data requested from a representative sample of projects.

9. Use of Operating Income

MHP Guidelines

a. Beginning in 2025, limits on Supportive Services Costs paid as Project Operating Expense shall be in accordance with the Department's "Notice of Omnibus Program Guideline Amendments Supportive Services Costs Limits" (Administrative Notice No. 24-05)(Administrative Notice No. 24-05) dated October 7, 2024. MHP Section 7313(e)

b. For Supportive Housing, as defined pursuant to Appendix A of the MHP Guidelines, 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 for Supportive Services paid for through the project operating budget. MHP Section 7313(f)

10. State and Federal Laws, Rules, Guidelines and Regulations

<u>All applicable MFSN Guidelines (MHP, FWHG, IIG)</u>

a. Proposed changes to this section include clarification of prevailing wage requirements, removal of Article XXXIV requirements, and addition of required shared parking feasibility study (Assembly Bill 894, 2023) to be submitted prior to execution of a Standard Agreement. MHP Section 7314, FWHG Section 303, IIG Section 300

11. Application Process, Application Content, and Application Eligibility Requirements

<u>All applicable MFSN Guidelines (MHP, FWHG, IIG)</u>

a. The proposed change identifies and clarifies the existing process of a feasibility and underwriting review that occurs in addition to threshold and scoring reviews and acknowledges the existing practice of allowing for limited application corrections outside the appeals process as part of feasibility and underwriting review. Corrections and clarifying information are routinely requested by Department staff during feasibility and underwriting review. The proposed changes include the ability to assess the majority of organizational documents as part of feasibility review, removing them from the threshold review and appeals process. The proposed changes also require this review to be finalized prior to any scheduled award dates to ensure timely responses from applicants. MHP Section 7318(b)(3) and (4), Section 7317(h), FWHG Section 402(b)(3) and (4), Section 401(g), IIG Section 401(b)(2) and (3), Section 400(h)

b. The prior MFSN 2023 NOFA permitted staff to request clarifying and/or corrective information through an appeals process. This proposed change acknowledges that process in the MFSN Guidelines. Staff intends to further specify in the 2025 NOFA the ability for corrections of minor errors and omission of existing documentation identified in the threshold and scoring reviews to be resolved through the appeals process, based on numerous requests from stakeholders. MHP Section 7318(b)(2), FWHG Section 402(b)(2), IIG Section 401(b)(1)

c. The proposed change adds a requirement to provide site plan and project design documents (not complete architectural drawings). These documents provide basic and fundamental information about the proposed project for which program funds are requested. MHP Section 7318(b)(6), FWHG Section 402(b)(5), IIG Section 401(b)(5)

<u>MHP Guidelines</u>

d. The percentage of funds for senior project type has been updated from 20.7 percent to 21 percent, based on current American Community Survey data. MHP Section 7317(g)(3)

IIG Guidelines

e. The proposed change requires Applicants to identify a Payee at time of application submission if the Payee is not a Recipient. The change also clarifies that if no Payee is identified at time of application submission every Payee must be a Recipient. In several past rounds of IIG funding, Recipients were not properly identified or included in the application, and multiple requests were made after award to add an entirely new entity as Recipient and Payee. New entities cannot be introduced as award Recipients once an award has been made pursuant to review of a competitive application. Applicants must identify IIG Recipients and Payees in the application. IIG Section 400(g), Appendix A Defined Terms

12. Legal Documents

All applicable MFSN Guidelines (MHP, FWHG, IIG)

a. The proposed change requires Standard Agreement execution within 30 days of receipt, with the potential penalty of award disencumbrance. The conditional award letter requires receipt of all organizational documents needed to complete the Standard Agreement within 60 days of the award letter. After the organizational document review process is complete, MFSN staff will provide a project's Standard Agreement exhibits to sponsors for review, and the exhibit templates will also be available on the MFSN webpage. Sponsors will have been provided the ability to verify information in the Standard Agreement and resolve any questions prior to formal receipt of the Standard Agreement and the beginning of the 30-day period. This change is proposed to ensure timely execution of Standard Agreements. Existing section 7317(a) requires execution of a Standard Agreement. MHP Section 7322, FWHG Section 501, IIG Section 500

13. Defaults and Loan or Grant Cancellations

All applicable MFSN Guidelines (MHP, FWHG, IIG)

a. Clarification that this section applies to both loans and grants. MHP Section 7324, FWHG Section 503

14. Defined Terms

Appendix A of MFSN Guidelines (MHP, FWHG, IIG)

a. Commercial Space, Operating Income: the proposed changes clarify and provide additional detail to the requirement that all leases for Commercial Space must be for fair market value ("FMV") rents, and otherwise on commercially reasonable terms and conditions, unless, in the sole and exclusive discretion of the Department, the commercial activity(ies) conducted within the Commercial Space provide a material benefit to the tenants occupying the Affordable Units. This requirement has been commonly cited in the project reports of awarded projects but not clearly stated within guidelines.

b. Emerging Developer: changes and updates corresponding to the proposed changes of MHP Guidelines Section 7303(d) and FWHG Section 203(d).

c. Principal: clarification of a principal’s role in their organization, and that a consultant’s experience does not equate to that of a principal.

d. TCAC/HCD Opportunity Area Map: in alignment with CDLAC regulations, addition of the ability for projects located in map areas designated as “Missing/Insufficient Data” or similar designation to be considered in the resource area that most frequently surrounds the perimeter of the project’s map area.