

Foreclosure Intervention Housing Preservation Program

Final Guidelines



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ARTICLE I. PURPOSE, AUTHORITY, AND DEFINITIONS.

Section 100. Purpose

The purpose of the Foreclosure Intervention Housing Preservation Program (FIHPP, or the Program) is to preserve affordable housing and promote resident ownership or nonprofit organization ownership of residential real property. FIHPP will provide funds for nonprofit organizations and other eligible entities to acquire and rehabilitate 1- to 25-unit buildings that are at risk of foreclosure or in the foreclosure process and maintain those properties as affordable housing.

Section 101. Authority

Health and Safety Code Section 50720.12 authorizes the California Department of Housing and Community Development (Department/HCD) to adopt guidelines for the administration of the FIHPP Program (the Guidelines), and expressly exempts those Guidelines from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Therefore, these Guidelines constitute rules, regulations, orders, or standards of general application that implement, interpret, and make specific Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code. These Guidelines have the full force and effect of law.

Section 102. Definitions

- (a) In addition to the definitions found in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code, in Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code, and in Section 50675.2 of the Health and Safety Code, the definitions in the Definition Appendix shall apply to these Guidelines.
- (b) The defined terms will be capitalized as they appear in the guideline text. References to sections herein refer to sections of these Guidelines unless otherwise noted.

Section 103. Incorporations by Reference

- (a) The Uniform Multifamily Regulations (UMR) (Cal. Code Regs., tit. 25, § 8300 et seq.), effective November 15, 2017, and as subsequently amended, are hereby incorporated by reference except to the extent that any UMR provision would be inconsistent with these Guidelines.
- (b) The Multifamily Housing Program (MHP) Final Guidelines, effective March 30, 2022, and as subsequently amended, are hereby incorporated by reference except to the extent that any MHP provision would be inconsistent with these Guidelines.
- (c) Health and Safety Code section 50406, subdivision (p), as subsequently amended (AB 1010), is hereby incorporated by reference.

- (d) Governor's Executive Order No. B-10-11 (September 19, 2011) and Governor's Executive Order N-15-19 (June 18, 2019) are hereby incorporated by reference.

ARTICLE II. EXECUTIVE SUMMARY AND OVERVIEW OF THE TIERED PROGRAM.

Section 200. Executive Summary

The objective of the FIHPP Program is to preserve Rental Housing Developments and Homeownership Developments as affordable housing by funding the intervention efforts of Eligible Sponsors at trustee's sales, pre-foreclosure intervention sales, and foreclosure risk intervention sales, and by assisting the acquisition, Rehabilitation, operation, and long-term affordability of those Projects.

Section 201. Overview of the Tiered Program

- (a) Using a Request for Proposals (RFP) process, the Department will contract with a team of Fund Managers to implement FIHPP. The team of Fund Managers will include one Administering Fund Manager (AFM) and multiple Implementing Fund Managers (IFMs). The Department will contract directly with the AFM. The Department's contract with the AFM will identify all of the AFM's proposed and Department-approved partnerships with qualified IFMs. The AFM will, in turn, subcontract with such approved IFMs.
- (b) Up to 20 percent of the funds appropriated for FIHPP may be expended on the qualifying administrative costs of the entire Program. The administrative costs of the AFM/IFM team shall be no more than 17 percent of the initial \$500 million of appropriated funds, or \$85 million over the lifetime of the Program.
- (c) The AFM will ultimately be responsible for implementing and managing the Program, will be the Department's main point of contact with respect to the Program, will manage and enforce the subcontracts with the IFMs, and will ensure compliance with loan and grant terms and conditions.
- (d) The IFMs will, among other things, implement the qualification process for prospective Eligible Sponsors; develop, review, and approve funding applications for Eligible Sponsors; and make loans and grants to fund the Eligible Sponsors' acquisition and rehabilitation of qualified properties. IFMs will also oversee the Project through Stabilization, including disbursing Rehabilitation funds; and manage the deposit of loan repayments into a reuse account for ongoing Program purposes for the full term of the loan and/or use restriction.
- (e) A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an "eligible borrower" pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with the Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor.
- (f) The Department's Director or designee will review, and make a written determination on, any request for an AB 1010 waiver or modification (AB 1010 Request) submitted by a Tribally Designated Housing Entity. The AB 1010

Request shall comply with the Department's AB 1010 program and applicable law. The Fund Manager team shall abide by and implement the Director's or designee's final AB 1010 determinations without any change or modification. All AB 1010 Requests shall be directed to the Director or to the Department's California Indian Assistance Program (CIAP).

ARTICLE III. DEPARTMENT - ADMINISTERING FUND MANAGER (AFM).

Section 300. Objectives

- (a) Utilizing the RFP process, the Department shall contract with the AFM to implement and manage the program until June 30, 2026. The Department may amend this contract past June 30, 2026, if funds are available and the Department deems such amendment to be appropriate. Such contract shall identify the team of qualified and Department-approved IFMs that will implement the Program pursuant to appropriate subcontracts with the AFM. The AFM shall enter into one or more subcontracts with such qualified, Department-approved IFMs.
- (b) The AFM will be the Department's main point of contact for all Program purposes, and will, among other things, manage, monitor, and enforce the subcontracts with the IFMs; develop and implement a plan, subject to Department approval, to disburse funds to the IFMs and to hold IFMs accountable for meeting FIHPP program goals; develop and oversee a close-out process for when each IFM ceases providing FIHPP funding; and oversee overall program implementation. Notwithstanding the Program's tiered implementation structure, the AFM shall be ultimately responsible for all aspects of Program implementation, operation, compliance, and enforcement.
- (c) An AFM is ineligible to be an Applicant or an Eligible Sponsor under the Program.

Section 301. Criteria for AFM Eligibility

- (a) The AFM must meet the qualifying criteria under subdivision (d) of Section 50720.6 of the Health and Safety Code.
- (b) The AFM should also have experience managing large pools of funds and have experience managing multiple lenders as subcontractors.

Section 302. Determination of AFM Eligibility

- (a) Pursuant to its Request for Proposals (RFP) process, the Department will publicly solicit proposals from AFM candidates who will (i) apply to act as the AFM by demonstrating that they can meet and responsibly satisfy the qualification requirements, performance specifications, performance milestones, time frames, and other FIHPP Program requirements set forth in the RFP and these Guidelines; and (ii) identify, in their proposal, a team of qualified IFMs with whom the AFM proposes to subcontract in order to fully implement the FIHPP Program, and the geographic service area in which each IFM will provide FIHPP funding. The geographic service areas of the IFMs are not required to match the areas used to define goals for the geographic distribution of FIHPP funds. (See Section 503.4(f))

of these Guidelines.) Each AFM candidate's proposed team of IFMs shall, to the maximum extent practicable, be geographically dispersed throughout the State of California.

- (b) The Department shall review and score all complete and timely submitted proposals in accordance with applicable law and the scoring rubric set forth in the RFP and shall make an award to the responsible proposer earning the highest score as determined by the Department.

Section 303. Compliance with All Licensing and Insurance Requirements

The AFM shall obtain, and at all times maintain in good standing, any and all licenses and authorizations, bonds, insurance coverages, and/or undertakings necessary or desirable to perform its duties under the FIHPP Program.

Section 304. Type and Timing of Disbursement

- (a) An initial grant of \$100 million will be made to the AFM at time of contract execution with the Department.
- (b) The AFM can request that the Department disburse additional Program funds, in tranches not to exceed \$100 million each (or the remaining funds if less than \$100 million remains to be disbursed to the AFM), during the term of the relevant contract. Each additional disbursement is subject to the AFM's satisfaction of the following conditions at or as of the time of the draw request:
 - (1) The AFM demonstrates that 75 percent of the most recent grant disbursement received has been committed by IFMs to Eligible Sponsors for Eligible Projects (including Capitalized Operating Subsidy Reserves);
 - (2) The AFM is not in default under its agreements with the Department or any subcontract with an IFM;
 - (3) The AFM is in compliance with all Program requirements; and
 - (4) The AFM has satisfied any and all conditions precedent to the Department's disbursement of additional tranches of grant funds.
- (c) If a grant award to the AFM under Health and Safety Code section 50720.6 is not issued, encumbered, or otherwise committed by December 31, 2025, the Department shall deposit those funds into the Housing Rehabilitation Loan Fund to be used as provided by applicable law. To the extent the AFM's committed grant award is undersubscribed, the AFM shall ensure that those excess funds are returned to the Department for deposit into the Housing Rehabilitation Loan Fund to be used as provided by applicable law.

Section 305. Eligible Uses of the Grant to the AFM

- (a) The AFM shall use the grant money to provide and maintain a stream of funding to the IFMs, who will use that funding to award loans and grants to Eligible Sponsors for predevelopment, acquisition, and Rehabilitation activities.

- (b) Additional eligible uses include all necessary and commercially reasonable costs to implement, administer, and enforce the Program, including, without limitation, any and all costs to develop lending criteria; develop a plan to ensure Eligible Sponsors' compliance with loan or grant terms and conditions; develop Program start-up activities; oversee IFMs; track progress toward program-level income and geographic goals; report to the Department; and monitor compliance.

Section 306. AFM's Scope of Work and Relevant Timelines

- (a) The AFM shall subcontract with Department-approved IFMs to support implementation of the program.
- (b) The AFM shall implement its plan to disburse FIHPP funds to the IFMs. Such plan shall have been submitted as part of the entity's RFP proposal and approved by the Department.
- (c) The AFM shall develop and implement a plan, subject to the Department's express prior written approval, to hold IFMs accountable for meeting FIHPP program goals. The plan shall include actions to be taken by an IFM (e.g., revision of their Project review and approval process) if its funded Projects have a high rate of significant problems (e.g., acquisition falls through, Rehabilitation costs greatly exceed initial estimates, Project does not achieve Stabilization in the timeframes required in Section 503.5(c) of the Guidelines).
- (d) The AFM shall monitor each IFM's portfolio for the purpose of overseeing distribution and disbursements of funds and tracking progress towards meeting Program objectives (e.g., equitable geographic distribution or serving targeted income levels).
- (e) The AFM shall collaborate with the IFMs to create an eligibility application form for Applicants to apply to become Eligible Sponsors. The eligibility application form is subject to the Department's express prior written approval. The AFM shall publish the Eligibility Application form and maintain and publish a list of Eligible Sponsors.
- (f) The AFM shall collaborate with the IFMs to create an application form(s) for Eligible Sponsors to apply for predevelopment, acquisition, and Rehabilitation funding. The original funding application form is subject to the Department's express prior written approval.
- (g) The AFM shall collaborate with the IFMs to develop a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for the IFMs' review and approval of Eligibility Applications (including, without limitation, standards for evaluating the Eligibility Applicants' documentary evidence of capacity). The criteria, standards, guidance, plans, forms, and processes are subject to the Department's express prior written approval.
- (h) Consistent with any application materials and work products submitted in response to the RFP, the AFM shall collaborate with the IFMs and develop a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review of Funding Applications; approval of Funding Applications; and disbursement of funds to Eligible Sponsors. The fund disbursement process shall

be sufficient to timely deploy funds necessary to acquire properties as allowed under paragraph (1) of subdivision (b) of Section 50720.2 of the Health and Safety Code. The criteria and guidance shall include project-level underwriting criteria; standards for sizing awards of predevelopment funding; cost limitations; minimum and maximum Partnership Incentive Fees, and project management fees. The underwriting criteria and guidance are subject to the Department's express prior written approval.

- (1) When developing project-level underwriting criteria and guidance on minimums and maximums for pro forma assumptions, the AFM shall base the numbers on actual values (e.g., costs, vacancy rates) for small-scale acquisition and rehabilitation projects.
 - (2) The AFM shall refine the underwriting criteria and pro forma guidance numbers as necessary as the IFMs fund larger numbers of acquisition and Rehabilitation Projects.
- (i) The AFM shall also collaborate with the IFMs to develop loan and grant boilerplate and documents (including, without limitation, funding agreements and use restrictions) to evidence, secure, and memorialize Eligible Sponsors' performance of and compliance with Program requirements, subject to the Department's express prior written approval. Such documentation shall be reasonably uniform across geographic regions.
 - (j) The AFM shall also collaborate with the IFMs to develop a consistent and comprehensive set of Eligible Sponsor requirements in connection with Project Stabilization, subject to the Department's express prior written approval.
 - (k) The AFM shall collaborate with the IFMs to develop a detailed appeal and grievance procedure for Eligibility Applicants and Funding Applicants. Such procedure is subject to the Department's express prior written approval.
 - (l) The AFM shall fund a Capitalized Operating Subsidy Reserve (COSR) for each Project that has been determined COSR-eligible by the IFM that has awarded money for that Project. For each Project that receives a COSR, the AFM shall provide long-term management of the COSR pursuant to these Guidelines. Alternatively, the AFM may subcontract out the COSR management duties for some or all Projects; provided, however, notwithstanding such subcontracting, the AFM shall at all times continue to remain ultimately responsible for all aspects of such COSR management duties. All costs in connection with such subcontracts for COSR management (e.g., costs of subcontract development, legal fees, subcontract amounts) are deemed to be "administrative costs." The entity that manages a given COSR shall be known as the COSR Managing Entity for that COSR.
 - (m) The AFM shall develop a plan and be responsible for ensuring Eligible Sponsors' compliance with loan or grant terms and conditions, including affordability terms and physical condition of the property, for the duration of the regulatory agreement. Alternatively, the AFM may subcontract out the long-term compliance monitoring duties for some or all Projects; provided, however, notwithstanding such subcontracting, the AFM shall at all times continue to remain ultimately

responsible for all aspects of such long-term compliance monitoring duties. All costs in connection with such subcontracts for long-term compliance monitoring (e.g., costs of subcontract development, legal fees, subcontract amounts) are deemed to be “administrative costs.” The entity that monitors long-term compliance for a given Project shall be known as the Compliance Monitoring Entity for that Project. The plan is subject to the Department’s express prior written approval.

- (n) The AFM shall provide the Department with a written assessment of the FIHPP portfolio and pipeline of Projects with respect to the geographic distribution targets and income levels served. The AFM shall provide this written assessment when it requests the next tranche in funding (or when it requests the remaining funds if less than \$100 million remains to be disbursed to the AFM). The Department will make any and all subsequent disbursements after confirming that the AFM is in compliance with all Program requirements. Such determination is within the Department’s sole and absolute discretion. The Department will also work with the AFM to consider whether to adjust the geographic distribution targets.
- (o) The AFM shall develop and oversee a close-out process for IFMs that cease to provide FIHPP funding to Eligible Sponsors. The process is subject to HCD’s express prior written approval.
- (p) The AFM shall ensure timely submission of all deliverables, including those deliverables to be developed by the IFMs, according to the timelines established in the STD 213, Standard Agreement.
- (q) The AFM shall receive Tribal Cultural Awareness Training or participate in an informational session with the Department’s California Indian Assistance Program (CIAP) to receive guidance relative to the AB 1010 process, goals, and intent.
- (r) Reporting.
 - (1) The AFM shall timely submit all reporting in form and substance acceptable to the Department in order to allow the Department to duly comply with its statutory reporting requirements to the Legislature.
 - (2) For the first calendar year from the date the Fund Manager team begins accepting applications to become Eligible Sponsors, the AFM shall submit quarterly reports to the Department. The quarterly reports are due no later than 30 days after the end of each quarter. For all subsequent years, until funds have been fully committed to Projects, the AFM shall submit semi-annual reports to the Department. The semi-annual reports are due no later than 30 days after the end of each six-month period. All reports shall include, without limitation, the following:
 - i. Distribution of FIHPP funds to IFMs
 - 1. Total funding disbursed to each IFM
 - 2. Total funding awarded by each IFM to each Funding Applicant

3. Total amount of funds returned to the reuse account by each IFM
 4. Current remaining and uncommitted FIHPP funds for each IFM
- ii. List of organizations that have been certified as Eligible Sponsors, including whether each Eligible Sponsor met the specific acquisition and rehabilitation experience requirements or whether the Eligible Sponsor met a qualifying exception to that requirement.
 - iii. List of predevelopment loans/grants made, including:
 1. Organization receiving funding
 2. Type of funding (loan or grant)
 3. Loan/grant disbursement date
 4. Total amount of loan/grant
 5. List of properties on which predevelopment funds were used
 6. Amount of predevelopment funding used on each property
 7. Whether or not the property was ultimately acquired
 - iv. List of acquisition/Rehabilitation loans/grants made, including:
 1. Organization receiving funding
 2. Type of funding (loan or grant)
 3. Loan/grant disbursement date
 4. Property address
 5. Number of units
 6. Geographic distribution of assisted properties, as per FIHPP Guidelines
 7. Total acquisition price for property
 8. Total amount of loan/grant
 9. Distribution of funds between acquisition and Rehabilitation
 10. Whether the funding was for additional Rehabilitation needs identified post-acquisition
 11. If the property also received a COSR, total amount of COSR
 12. Proposed term of affordability restrictions for units (rental, ownership, cooperative ownership)
 13. Income levels served
 14. The expiration date of the Project's affordability restrictions
 15. After Project achieves Stabilization, add:
 - a. The amount of the initial Project funding that was recovered due to other subsequent financing sources
 - b. List of other financing sources, if applicable
 - c. For each unit, the number of occupants and gross household income
 - d. Demographic composition of occupants, including race/ethnicity and age
 - e. Copy of the recorded Regulatory Agreement

- v. Status of Capitalized Operating Subsidy Reserves (COSRs), including:
 - 1. Organization receiving COSR
 - 2. Property addresses for properties receiving COSR
 - 3. Date of COSR capitalization
 - 4. Length (number of years) of COSR
 - 5. Total amount of initial COSR
 - 6. Amount of COSR remaining as of the date of the submitted report

 - vi. Progress towards the income and geographic equity targets described in these Guidelines.

 - vii. Summary of funds spent to date on administrative costs, with a line-item breakdown of each category of administrative cost.

 - viii. Summary of the AFM's and each IFM's Tribal Cultural Awareness Training or participation in an informational session with the Department's CIAP relative to the AB 1010 process, goals, and intent.

 - ix. Narrative description of program progress, including any challenges identified in program execution and/or recommendations for program changes.
- (3) After all funds have been committed to Projects, the AFM shall submit annual reports to the Department. The annual reports are due no later than 90 days after the end of each calendar year until every funded Project has reached the end of its 55-year affordability term. Reports shall include, without limitation, the following:
- i. List of all FIHPP-funded Projects and related unit and occupancy restriction data, and the end date of their affordability term.

 - ii. Status of Capitalized Operating Subsidy Reserves (COSRs), including:
 - 1. Organization receiving COSR
 - 2. Property address for property receiving COSR
 - 3. Date of COSR capitalization
 - 4. Length (number of years) of COSR
 - 5. Total amount of initial COSR
 - 6. Amount of COSR remaining as of the date of the submitted report

 - iii. Summary of compliance monitoring activities undertaken, such as the following:

1. List of Eligible Sponsors that provided written information
 2. List of Projects for which written information was received
 3. List of Projects that received site visits for physical inspection
- iv. Summary of compliance findings, such as the following:
1. List of Projects that were out of compliance
 2. List of IFMs that were out of compliance
 3. Reason(s) for the non-compliance
 4. Any action(s) taken by the AFM, IFM, and/or Eligible Sponsor to correct the non-compliance
- v. Summary of funds spent to date on administrative costs.
- vi. Narrative description of program progress, including any challenges.

Section 307. Legal Documents

Section 307.1 Standard Agreement

The Department shall enter into an STD 213, Standard Agreement with the AFM. This agreement shall include, but not be limited to, the following:

- (a) The AFM's responsibilities for timing and completion of FIHPP program setup and key deliverables, including reporting requirements;
- (b) Manner, timing, and conditions for disbursement of FIHPP funds to the AFM;
- (c) Manner, timing, and conditions for the AFM's disbursement of FIHPP funds to the IFMs;
- (d) Terms and conditions for extending the Standard Agreement beyond the initial term;
- (e) Remedies available to the Department in the event of a violation, breach, or default of the Standard Agreement;
- (f) Requirements that the AFM must permit the Department, or its designated agents and employees, to inspect all books, records, and documents maintained by the AFM in connection with FIHPP;
- (g) Terms and conditions required by federal or state law; and
- (h) Other provisions necessary to ensure compliance with the requirements of FIHPP.

Section 307.2 Monitoring Agreement.

The Department and the AFM shall enter into a Monitoring Agreement that shall run until the expiration date of the affordability term for the last Project that receives funding

under the Program. Among other terms and conditions, the Monitoring Agreement will require the AFM to monitor and oversee the Projects in the FIHPP Program portfolio and monitor and oversee the IFMs to ensure that they are duly implementing the Program, abiding by the Program requirements, monitoring the Eligible Sponsors (if applicable), and monitoring their respective portfolios of Projects.

Section 308. Breach/Violation

- (a) If the AFM is in breach, default, or violation of any of the provisions of: (i) these FIHPP Guidelines or other Program requirements; (ii) the STD 213, Standard Agreement, the Monitoring Agreement, or any other agreement between the AFM and the Department; (iii) any subcontract between the AFM and the IFMs; or (iv) any Program loan or grant instrument that confers an obligation upon the AFM or is assigned to the AFM for enforcement (including, without limitation, those instruments that name the Department as a third party beneficiary), then the Department may, at its election and in its sole and absolute discretion, exercise one or more of the following rights and remedies:
- (1) Recapture any and all Program grant funds previously disbursed to the AFM that are then still in the AFM's possession or control. The AFM shall reimburse any and all such Program funds to the Department immediately upon demand.
 - (2) Terminate the AFM (both in its AFM capacity and in any hybrid AFM/IFM capacity) and, in accordance with state contracting procedures, select a replacement AFM to perform some or all of the Program-related services then being performed by the terminated AFM.
 - (3) Require that the AFM assign all of its right, title, and interest in, to, and under the subcontracts to the Department and/or its designee. The AFM shall make such assignment as directed by the Department, immediately upon demand, and in form and substance reasonably satisfactory to the Department. In order to minimize Program disruption, the Department may send notice to the IFMs of the AFM's termination and request that the IFMs attend to the Department and/or the Department's designee.
 - (4) Exercise any and all other rights and remedies available to the Department at law or in equity.
- (b) The foregoing rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law.
- (c) If the AFM is terminated or otherwise ceases to act in an AFM capacity, the AFM shall also be terminated in its capacity to act as IFM and shall cease acting in that or any other capacity.

Section 309. Department – AFM/IFM Hybrid

The AFM may choose to serve as an IFM in all or some of the geographic service areas. To the extent the AFM is acting in both AFM and IFM capacities, the AFM shall perform in accordance with both Article III and Article IV of these FIHPP Guidelines.

Where the AFM is also performing as an IFM, the Department shall monitor and oversee the AFM's performance in that IFM capacity.

ARTICLE IV. AFM – IFM.

Section 400. Objectives

The AFM shall enter into one or more subcontracts with those qualified IFMs that have been approved by the Department. The IFMs shall be the Program's main point of interface with, and the delivery conduit of Program funds to, Eligible Sponsors. An IFM is ineligible to be an Applicant or an Eligible Sponsor under the Program.

Section 401. Criteria for IFM Eligibility

- (a) Each IFM must meet the qualifying criteria under subdivision (d) of Section 50720.6 of the Health and Safety Code.
- (b) Each IFM should also have experience working with nonprofits who do acquisition and Rehabilitation of small properties (such as Community Land Trusts or community development corporations).

Section 402. Compliance with All Licensing and Insurance Requirements

The IFM shall obtain, and at all times maintain in good standing, any and all licenses and authorizations, bonds, insurance coverages and/or undertakings necessary or desirable to perform its duties under the FIHPP Program.

Section 403. Type and Timing of Disbursement

- (a) The AFM shall disburse funding to the IFMs as grants.
- (b) Each grant disbursement to an IFM shall be conditioned on the following:
 - (1) The AFM's receipt of Program funding from the Department;
 - (2) The IFM's submittal of a written draw request to the AFM;
 - (3) The IFM's written demonstration, in form and substance acceptable to the AFM, that it has successfully committed at least 75 percent of any previous disbursement to qualifying Projects under the Program; and
 - (4) At the time of the IFM's written draw request, the IFM is not in default or violation of its subcontract with the AFM, any of its loan or grant agreements with an Eligible Sponsor, or any of the Program's requirements.

Section 404. Eligible Uses of Disbursement to IFM

- (a) Those activities that are included within the IFM's Scope of Work, as set forth by these Guidelines, constitute eligible uses of FIHPP funds.

- (b) The IFM's share of Transaction Costs in connection with Project acquisition also constitutes an eligible use. The IFM's Transaction Costs are the IFM's financing costs, underwriting costs, and legal fees related to acquiring the Project. These costs are not considered administrative costs for purposes of Health and Safety Code section 50720.2, subdivision (b)(3).

Section 405. IFM's Scope of Work

- (a) IFMs shall collaborate with the AFM to create or perform all of the following deliverables:
 - (1) Creating an Eligibility Application form for Applicants to apply to become Eligible Sponsors. The Eligibility Application form is subject to the Department's express prior written approval.
 - (2) Creating a Funding Application form(s) for Eligible Sponsors to apply for predevelopment, acquisition, and Rehabilitation funding. The original Funding Application form is subject to the Department's express prior written approval.
 - (3) Developing a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review and approval of Eligibility Applications (including, without limitation, standards for evaluating the Eligibility Applicants' documentary evidence of capacity). The criteria, standards, guidance, plans, forms, and processes are subject to the Department's express prior written approval.
 - (4) Consistent with any application materials and work products submitted in response to the RFP, developing a detailed and consistent set of criteria, standards, guidance, plans, forms, and processes for IFMs' review of Funding Applications; approval of Funding Applications; and disbursement of funds to Eligible Sponsors. The fund disbursement process shall be sufficient to timely deploy funds necessary to acquire properties as allowed under paragraph (1) of subdivision (b) of Section 50720.2 of the Health and Safety Code. The criteria and guidance shall include project-level underwriting criteria; standards for sizing awards of predevelopment funding; cost limitations; and minimum and maximum Partnership Incentive Fees and project management fees. The underwriting criteria and guidance are subject to the Department's express prior written approval.
 - (5) Developing loan and grant boilerplate and documents (including, without limitation, funding agreements and use restrictions) to evidence, secure, and memorialize Eligible Sponsors' performance of and compliance with Program requirements, subject to the Department's express prior written approval. Such documentation shall be reasonably uniform across geographic regions.
 - (6) Developing a consistent and comprehensive set of Eligible Sponsor requirements in connection with Project Stabilization, subject to the Department's express prior written approval.

- (7) Developing a detailed appeal and grievance procedure for Eligibility Applicants and Funding Applicants. Such procedure is subject to the Department's express prior written approval.
- (b) IFMs shall perform all other activities necessary to implement the Program at the IFM-Eligible Sponsor level in compliance with Program requirements. Such eligible activities include, without limitation, the following:
- (1) Review and approval of Eligibility Applications;
 - (2) Review and approval of Funding Applications from Eligible Sponsors for Predevelopment, Acquisition, and Rehabilitation funding;
 - (3) Collaboration with Eligible Sponsors to develop acquisition and Rehabilitation budgets;
 - (4) Disbursement of Predevelopment, Acquisition, and Rehabilitation funding to qualifying Eligible Sponsors;
 - (5) Ensuring, at funding origination, that Projects are adequately capitalized for long-term success, including with adequate contingencies and operating and replacement reserves;
 - (6) Ensuring the official recordation of legally sufficient use restrictions or deed restrictions to maintain the use and affordability of the Projects in accordance with Program requirements;
 - (7) Monitoring of Eligible Sponsor activities through Project Stabilization (where the IFM has awarded a grant to the Eligible Sponsor's Project);
 - (8) Monitoring of Eligible Sponsor activities for the full loan term (where the IFM has awarded a loan to the Eligible Sponsor's Project);
 - (9) Enforcement of loan and grant documents in connection with Eligible Sponsor activities through the loan term (for FIHPP loans) or through Project Stabilization (for FIHPP grants);
 - (10) Managing all repayments of FIHPP funds to the reuse account;
 - (11) Working closely with the technical assistance provider and/or the Department's CIAP to support successful FIHPP implementation;
 - (12) Receiving Tribal Cultural Awareness Training or participating in an informational session with the Department's CIAP to receive guidance relative to the AB 1010 process, goals, and intent; and
 - (13) Upon request and as specified by the AFM, providing all necessary information to support the AFM's required reporting to the Department.

Section 406. Legal documents

Section 406.1 Subcontracts between AFM and IFM

- (a) Subcontracts between the AFM and the IFM shall set forth the parties' respective duties, obligations, deliverables, and performance deadlines relative to implementing the FIHPP Program.
- (b) Each IFM must have funding available at all times to quickly fund their anticipated pipeline of Funding Applications.
- (c) Each subcontract is subject to the Department's express prior written approval and shall be in form and substance satisfactory to the Department in its sole and absolute discretion.
- (d) The subcontracts shall be assignable to the Department (or its designee) and shall contemplate and provide for attornment by the IFMs to the Department (or its designee), in the event that the Department's contract with the AFM is terminated for any reason.

Section 406.2 Fund Monitoring and Reuse Account Agreements

- (a) Each IFM shall enter into a Fund Monitoring and Reuse Account Agreement with the AFM. Pursuant to this agreement, the AFM shall monitor the IFM's supervision and oversight of the Projects within its portfolio, as well as its enforcement of Program requirements. The agreement shall (a) allow the Department to access, inspect, and audit any and all records maintained by the AFM and IFMs in relation to Program activities and the Program's reuse account; and (b) address the IFM's monitoring, supervision, oversight, and enforcement obligations. The IFM's relevant obligations, for purposes of the Program and this agreement, include, without limitation, the following:
 - (1) Enforcement of loan and grant documents in connection with Eligible Sponsor activities through the loan term (for FIHPP loans) or through Project Stabilization (for FIHPP grants);
 - (2) Maintaining a reuse account that is dedicated solely to repayments of FIHPP funds and earned interest, and that is segregated from any and all other of the IFM's accounts;
 - (3) Ensuring that the funds in the reuse account are not commingled with any of the IFM's other funds and are ultimately reused for Program purposes;
 - (4) Accounting for Project loan repayments;
 - (5) Calculating loan amounts due and payoffs;
 - (6) Ensuring any deed of trust is released as a lien on the property upon satisfaction of all secured obligations; and

- (7) Collection and enforcement of Program notes and other obligations in default.
- (b) The Fund Monitoring and Reuse Account Agreement shall also require all of the following:
 - (1) All repayments of Program loan principal, interest and other amounts shall be deposited into a separately maintained reuse account for ultimate reuse for Program purposes.
 - (2) In the event an Eligible Sponsor sells a Program-funded unit pursuant to a loan agreement, the IFM shall ensure that all purchase and repayment proceeds generated by the sale are deposited into the relevant reuse account.
 - (3) A tracking system to ensure and document the reuse of the funds for eligible Program activities.
 - (c) The Fund Monitoring and Reuse Account Agreement shall comport with the AFM's Department-approved plans for IFM accountability and Eligible Sponsor compliance.

Section 406.3 Loan Documentation

The form of Program loan documentation developed by the AFM and the IFMs pursuant to these Guidelines shall be consistent with the following general principles. These principles shall apply, as applicable, to loan documentation between the Eligible Sponsor and the IFM, as well as to any loan documentation in connection with the conveyance of the property to an owner-occupant buyer:

- (a) The promissory note shall have a term of at least 10 years and shall bear interest at 3 percent per annum, which interest shall start accruing upon disbursement of funds, with all outstanding principal and accrued unpaid interest being deferred until the earlier of: (i) the stated maturity date, or (ii) such earlier date as the loan becomes due and payable. The loan evidenced by the promissory note shall be non-assumable.
- (b) The principal amount of such promissory note shall be subject to the per-unit funding maximums set forth in these Guidelines.
- (c) The promissory note, and the loan evidenced thereby, shall be secured by a deed of trust encumbering all real property and related interests acquired with Program funds recorded in the official real property records of the county in which the acquired property is located. Where Program funds constitute the majority of all financing provided in connection with the acquisition and Rehabilitation of such property, the lien of the deed of trust shall constitute a first (1st) priority lien against the property prior and superior to all other financing and use restrictions, provided, however, such deed of trust shall in all cases be subject and subordinate to any Program affordability restrictions recorded against such property in connection with the acquisition thereof as contemplated by these Guidelines. Where Program funding does not constitute the majority of all financing provided in connection with

the acquisition or rehabilitation of the property, the IFM may, on a case-by-case basis, agree to subordinate the deed of trust in accordance with the principles and considerations of Section 8315 of the UMRs.

- (d) Among other things, the deed of trust shall contain due on transfer and due on encumbrance provisions allowing for the acceleration of all outstanding principal and accrued but unpaid interest due under the promissory note upon the transfer, conveyance or encumbrance of all or any portion of the property. Notwithstanding the foregoing, the following transfers of individual residential units shall not trigger acceleration:
 - (1) A transfer to a surviving joint tenant by devise, descent, or operation of law upon the death of a joint tenant; or
 - (2) A transfer, in which the transferee is a person who occupies or will occupy the unit, which is:
 - i. A transfer where the spouse becomes an owner of the unit;
 - ii. A transfer resulting from a decree of dissolution of marriage, legal separation, or from an incidental property settlement agreement by which the spouse becomes the owner of the unit; or
 - iii. A transfer into an inter vivos trust in which the Eligible Sponsor, or the individual to whom the Eligible Sponsor sells the unit is and remains the beneficiary and occupant of the unit.
- (e) All principal and interest due under the promissory note shall become due on the earliest to occur of the following: (i) the stated maturity date, (ii) when the property ceases to be owner-occupied, or (iii) upon the sale or transfer other than those permitted by the subparagraph immediately preceding. If a Project's take-out financing is less than the Project's FIHPP award for acquisition/Rehabilitation, then the Eligible Sponsor is only required to return the equivalent portion of the FIHPP funding covered by the refinancing. The outstanding balance (i.e., the difference between the take-out financing and the FIHPP funding) remains as gap financing for the Project.
- (f) The IFM may convert all or part of a FIHPP-funded loan into a grant at any time provided the Eligible Sponsor is not in default or violation of any of its agreements with the IFM or any of the Program's requirements.
- (g) In addition to securing the promissory note, the deed of trust shall secure performance of any Program affordability restrictions.
- (h) The promissory note may be prepaid in whole or in part, provided, however, in no event or circumstance shall any prepayment of the note entitle the borrower thereunder or the property owner to a reconveyance of the deed of trust or the termination of the Program affordability restrictions, as the deed of trust secures both the promissory note and such Program restrictions, and such Program restrictions shall continue on for their full stated term notwithstanding any repayment or prepayment of the promissory note.

- (i) The Eligible Sponsor shall, at its sole cost and expense, provide the IFM with an ALTA Lender's policy of title insurance insuring the perfection, validity, and priority of the deed of trust as a lien on the property acquired consistent with the foregoing.

Section 406.4 Use Restrictions

- (a) For every Project loan or grant awarded by the IFM, the IFM shall cause the recordation of a restrictive covenant, regulatory agreement, or similar use restriction against the Project real property. Where Program funds provide all or most of the Project financing, the use restriction shall be recorded as a lien against the Project in first position, and shall remain in first position, over all other Project agreements, covenants, or other matters of record on the real property for the period of affordability required by the Program. Where Program funds do not constitute the majority of Project financing, the IFM may agree to subordinate the Program deed of trust, regulatory agreement, or other agreement securing payment or performance under the Program in accordance with the principles and considerations set forth at Section 8315 of the UMRs.
- (b) The recorded use restriction shall be in form and substance substantially similar to the boilerplate document that was developed by the Fund Manager team and approved by the Department.

Section 407. Breach/Violation

- (a) If the IFM is in breach, default, or violation of any of the provisions of: (i) these FIHPP Guidelines or other Program requirements; (ii) the relevant subcontract between the IFM and the AFM; (iii) the relevant Fund Monitoring and Reuse Account Agreement between the IFM and the AFM; (iv) any Program loan or grant documentation between the IFM and an Eligible Sponsor; or (v) any Program agreement under which the Department may be a third party beneficiary, then the AFM shall exercise one or more of the following rights and remedies, all subject to the Department's express prior written approval:
 - (1) Recapture any and all Program grant funds previously disbursed to the IFM that are then still in the IFM's possession or control. The IFM shall reimburse any and all such Program funds to the AFM immediately upon demand.
 - (2) Terminate the subcontract with the IFM. If an IFM is terminated, the AFM shall do one of the following:
 - i. Substitute one or more other existing IFMs to cover the relevant geographical region. If the AFM also serves as an IFM in that geographical region, the AFM shall make documented best efforts to secure an acceptable IFM other than itself before self-designating as the IFM for the relevant geographical region.
 - ii. If there are no other IFMs in that geographical region, then the AFM shall either step in and assume the departing IFM's responsibilities, or the AFM shall secure an adequate replacement IFM. Such

replacement IFM is subject to the Department's express prior written approval.

- iii. Distribute any funds returned from the terminated IFM to the replacement IFM or existing IFMs for FIHPP program purposes.
 - (3) Require that the IFM assign all of its right, title, and interest in, to, and under the loan/grant documents and reuse accounts to the AFM or to another IFM designated by the AFM and subject to the Department's prior written approval.
 - (4) Exercise any and all other rights and remedies available to the AFM at law or in equity.
- (b) The foregoing rights and remedies shall be cumulative and non-exclusive to the maximum extent permitted by law.

ARTICLE V. IFM – ELIGIBLE SPONSOR.

Section 500. Objectives

Entities that qualify to be Eligible Sponsors may submit applications for predevelopment/acquisition/Rehabilitation funding to their choice of IFMs whose geographic service area covers the area in which the Eligible Sponsor (for predevelopment funding) or the Project (for acquisition/Rehabilitation funding) is located, or they may submit applications to the AFM if working in an AFM/IFM hybrid capacity. If successful, Eligible Sponsors will then work with their chosen Fund Manager to acquire and Rehabilitate a Homeownership Development or a Rental Housing Development, and to preserve, operate, and maintain such Project as affordable housing in accordance with Program requirements.

Section 501. Eligibility Application Process

- (a) In order to apply for FIHPP funds, an organization must have first been qualified as an Eligible Sponsor.
- (b) The qualification process will be managed by the FIHPP Fund Managers. Each prospective Eligible Sponsor shall submit an application to the AFM. The AFM shall assign each application to an IFM covering the geographical area in which the prospective Eligible Sponsor is located for review. If there are multiple IFMs covering that geographical area, the AFM shall assign the application to one of the IFMs at random. If the AFM serves as an IFM covering that geographical area, the AFM must assign the application to another IFM unless there is no other IFM covering that geographical area.
- (c) The Eligibility Application shall require, without limitation, the following information and supporting documentation:
 - (1) A comprehensive set of the entity's organizational documents (and all amendments thereto);

- (2) All California Secretary of State business filings and Certificates of Status relevant to the entity's qualification to transact business in the State of California;
 - (3) State and federal tax-exempt status letters; and
 - (4) Any other documentation required or deemed necessary by the AFM and IFMs to verify the Applicant's experience and capacity to be an Eligible Sponsor.
- (d) Following receipt of a complete Eligibility Application from an Eligibility Applicant, the IFM will approve or deny the application within 10 business days. No additional eligibility review or approval is required from the AFM or the Department after the IFM has approved or denied an application. If an IFM denies an application, the IFM shall explain the basis for the denial to the prospective Eligible Sponsor in writing.

Section 502. Funding Application Process

- (a) After qualifying as Eligible Sponsors, the Eligible Sponsors may submit Funding Applications for predevelopment/acquisition/Rehabilitation funding to their choice of IFMs within their geographic service area (including the AFM if performing in a hybrid AFM/IFM capacity).
- (b) A Funding Application for predevelopment funding shall require, without limitation, the following information and supporting documentation:
 - (1) The amount of funding requested and the corresponding disbursement schedule.
 - (2) Any other documentation required or deemed necessary by the AFM and IFMs to support the Funding Application for predevelopment funding.
- (c) A Funding Application for acquisition/Rehabilitation funding shall require, without limitation, the following information and supporting documentation:
 - (1) The type of Project proposed for funding (i.e., Homeownership Development or Rental Housing Development) and its geographic location.
 - (2) Information regarding the property's profile as a foreclosure risk or its status in the pre-foreclosure or foreclosure process.
 - (3) The amount of funding requested and the corresponding disbursement schedule.
 - (4) Cost breakdowns, budgets, other proposed financing, and any other documentation (including targeted income levels) required or deemed necessary by the AFM and IFMs to support the Funding Application for acquisition/Rehabilitation funding.

- (d) If an application submittal is complete, then the IFM will approve or deny that application within the timeframe specified in the relevant STD 213, Standard Agreement.

Section 503. Predevelopment/Acquisition/Rehabilitation Funding

Section 503.1 Eligible Sponsors

- (a) **Statutory Eligibility.** In order to become an Eligible Sponsor, the entity (or all joint Eligible Sponsor entities in a partnership) must satisfy subpart (A), (B) or (C) of subparagraph (2) of subdivision (b) of Section 50720.2 of the Health and Safety Code; provided, however, natural persons that satisfy subpart (A) of subparagraph (2) of subdivision (b) of Section 50720.2 of the Health and Safety Code, including eligible tenant buyers as defined in subparagraph (2) of subdivision (a) of Section 2924m of the Civil Code, must partner with an Eligible Sponsor.
- (b) **Experience.** Entities applying to become Eligible Sponsors must demonstrate that they have experience in acquiring and rehabilitating properties and managing those properties as affordable housing.
 - (1) To become an Eligible Sponsor, at least one Applicant entity must have successfully acquired and Rehabilitated at least two (2) properties in the last 10 years or at least one Applicant entity must have an ongoing employment or contractual relationship with staff or consultants who have served as project lead on the acquisition and Rehabilitation of at least two (2) properties in the last 10 years. Applicants must provide details on all completed Affordable Housing Development projects with which they were involved within the last 10 years, including the role(s) the organization(s) played in each project. If the Applicant entity is relying on an employment or contractual relationship to meet this experience requirement, that relationship may either be pre-existing or prospective. In either case, the qualifying relationship shall be in place at the time of Eligibility Application. The Applicant entity shall provide documentary evidence of such relationship at time of Eligibility Application and must maintain a qualifying relationship until the Applicant entity itself can meet the minimum experience requirement of having successfully acquired and Rehabilitated at least two (2) properties in the last 10 years.
 - (2) There are exceptions to this experience requirement. If there are insufficient qualifying applications in a given IFM's geographic service area after a three-month application period, then the relevant IFM may permit applications from Applicants that are from that geographic service area and that have experience in developing and managing affordable housing. These Applicants must have successfully completed at least two (2) Affordable Housing Development projects within the last 10 years, or they must have an ongoing employment or contractual relationship with staff or consultants who have served as project lead on at least two (2) Affordable Housing Developments in the last 10 years. These Applicants should commit to seek technical assistance from FIHPP technical assistance providers or the CIAP on acquisition and rehabilitation of small

properties. Applicants must provide details on all completed Affordable Housing Development projects with which they were involved within the last 10 years, including the role(s) the organization(s) played in each project. If the Applicant entity is relying on an employment or contractual relationship to meet the criteria under this exception, that relationship may either be pre-existing or prospective. In either case, the qualifying relationship shall be in place at the time of the Eligibility Application. The Applicant entity shall provide documentary evidence of such relationship at time of Eligibility Application and must maintain a qualifying relationship until the Applicant entity itself can meet the minimum experience requirement of having successfully acquired and Rehabilitated at least two (2) properties in the last 10 years or successfully completed at least two (2) Affordable Housing Development projects within the last 10 years.

- (3) **Project Management Experience.** The Applicant's project manager must have experience with at least one affordable housing acquisition (or Affordable Housing Development) or be assisted by a consultant or other staff person with greater experience. When using a consultant, the consultant's resume should demonstrate that the consultant has successfully managed all aspects of at least two (2) comparable development projects in the recent past.
 - (4) **Property Management Experience.** Applicants seeking FIHPP funds for properties to be managed as affordable rental housing must also demonstrate property management experience. The Applicant, the Applicant's staff, or the Applicant's management agent must have managed at least one Affordable Housing Development for at least 24 months of occupancy.
 - (5) **Construction Management Experience.** The Applicant's construction manager must have experience with at least one Affordable Housing Development.
 - (6) **Experience – Homeownership Units.** Applicants seeking FIHPP funds for properties to be managed as affordable homeownership units must also demonstrate experience managing a long-term affordable homeownership program including at least two (2) properties and at least one (1) resale. Experience requirements may be met by the Applicant's staff or a consultant.
 - i. **Conversions to Cooperative Ownership.** Applicants seeking FIHPP funds for properties to be converted to cooperative ownership must also demonstrate that they have experience transitioning at least two (2) properties to co-operative ownership and experience with nonprofit oversight of at least two (2) co-op properties for at least five (5) years. Experience requirements may be met by the Applicant's staff or a consultant.
- (c) **Capacity.** Entities applying to become Eligible Sponsors must demonstrate sufficient staff and organizational capacity to successfully execute the Affordable Housing Development transaction for which FIHPP funding is provided. In cases of

joint Eligibility Applicants, at least one entity in the Applicant partnership must meet the capacity requirements.

- (1) **Financial Stability and Operational Capacity.** Eligible Sponsors must be financially stable and demonstrate sufficient staff and organizational capacity to own and operate the proposed housing in a manner that is sustainable over the long term.
 - i. **Financial Stability – Plan.** The Applicant must provide a business and sustainability plan that demonstrates their ability to sustainably own and operate Affordable Housing Developments in the long term. The plan must indicate the types and estimated quantity of properties the organization intends to acquire and operate and include a 20-year cash flow that demonstrates the financial viability of the projected acquisitions and the Applicant’s operational sustainability. The plan can assume the organization received FIHPP funds pursuant to these Guidelines. In order for an Eligible Sponsor to receive FIHPP funds for a given project, the project must be consistent with the business and sustainability plan.
 - ii. **Financial Stability – Data.** The Applicant must provide financial data, staffing, and governing body, partnership, or management information, development history, list of real estate owned, litigation history, and organizational good standing information for the past three (3) years, or for all years the Applicant has been in legal existence if the Applicant has been in legal existence for less than three years. Applicants that have been in legal existence for less than three years are subject to additional review on a case-by-case basis; decisions will be made in the IFM’s sole discretion.
 - iii. **Operational Capacity – Construction Management Capacity.** The Applicant must identify specific staff or consultant(s) who will provide construction management functions relative to Rehabilitation on behalf of the owner, including permit applications and expediting, cost analysis, completion evaluations, change order evaluations, scope analysis and schedule analysis.
 - iv. **Operational Capacity – Asset Management Capacity.** The Applicant must describe asset management staffing plans and show how they manage the financial performance and capital needs of their existing and future assets, including timely performance of capital needs assessments, maintaining adequate replacement reserves and timely collection of tenant rents if applicable.
 - v. **Program and Property Management Capacity.** The Applicant must demonstrate that they have:
 1. Resident selection procedures that meet the fair housing requirements as detailed in these Guidelines (including

ensuring that if a property transitions to cooperative ownership, fair housing requirements continue to be met).

2. A monitoring plan to ensure ongoing compliance (e.g., annual verification of primary residence, annual income verification for rental properties).
3. A plan to ensure that properties in the organization's portfolio are transferred to another Eligible Sponsor that will maintain long-term affordability if the organization shuts down, is determined to be out of compliance, or is otherwise no longer a fit and willing owner.

vi. **Capacity – Homeownership Units.** Applicants seeking FIHPP funds for properties to be managed as affordable homeownership units must also demonstrate that they have a plan for managing resales, including a resale formula to determine the new sales price.

(2) **Joint Eligible Sponsor Application - Exception to Experience and Capacity Requirements.**

- i. If an entity does not fully meet the relevant experience and capacity requirements to become an Eligible Sponsor, that entity may jointly apply to become an Eligible Sponsor with another entity that does fully meet those requirements. This exception is subject to all of the following:
 1. Prior to the disbursement of any FIHPP funds, the joint Eligibility Applicant entities shall enter into a fully executed contract that provides for their mutual performance as joint Eligible Sponsor entities. The contract shall identify the less experienced and/or resourced entity as the designated payee for any awards of FIHPP funds. The contract term shall be no less than ten (10) years in duration. Division of duties shall be subject to negotiation between the parties.
 2. The joint Eligible Sponsor entities shall equitably divide any project management fees that accrue under the FIHPP Program prior to, at, or after Project acquisition.
 3. FIHPP funds may be used to provide the more experienced and/or resourced entity with a one-time Partnership Incentive Fee per Eligible Sponsor partnership. The Partnership Incentive Fee is payable from the first award of FIHPP funds to the joint Eligible Sponsor entities. The Partnership Incentive Fee is not available to joint Eligible Sponsor entities that are affiliated.

(d) **Commitment to Racial Equity.**

- (1) The entity (or all joint Eligible Sponsor entities) must have a demonstrated commitment to advancing racial equity and reducing racial disparities in housing outcomes without engaging in discrimination. As part of the application to become an Eligible Sponsor, entities shall provide the following:
 - i. A profile describing the entity's mission, its length of existence, its staff experience, the composition of its Board of Directors or partnership or management structure, and its commitment to affordable housing and advancing racial equity;
 - ii. A narrative analysis of racial disparities in housing outcomes in the entity's geographic area of operation, including, but not limited to, income by race, housing cost burden by race, history of displacement of residents of color;
 - iii. A description of actions the organization is already taking to reduce racial disparities in housing outcomes, e.g., documenting the race and ethnicity of residents served by the organization, engaging with residents to inform the entity's work, marketing projects equally to all racial and ethnic groups, and using a tenant or homebuyer selection process that does not disadvantage individual racial groups; and
 - iv. A plan for additional actions the entity will take to reduce racial disparities in housing outcomes in its geographic area of operation.

Section 503.2 Type and Term of Funding

- (a) An IFM shall provide an Eligible Sponsor with the option to receive funding in the form of a grant or a loan.
- (b) FIHPP funds can be used for up to 100 percent of eligible Project costs. No developer equity is required. However, Eligible Sponsors may leverage FIHPP funds with other funds.
- (c) **Predevelopment Funding.**
 - (1) **Pre-Acquisition Transaction Costs.** An IFM shall make predevelopment funding available to an Eligible Sponsor to pay its reasonable Pre-Acquisition Transaction Costs related to acquiring an Eligible Project. Pre-Acquisition Transaction Costs shall be limited to the following:
 - i. The costs of performing pre-acquisition due diligence with respect to an identified Eligible Project. Pre-acquisition due diligence includes the retention of third-party professionals to generate surveys, appraisals, inspections, environmental assessments and other reports or studies related thereto.
 - ii. The costs of the following, as applicable:

1. Reasonable legal fees incurred in connection with negotiating and executing a legally binding purchase and sale agreement, option agreement, or other similar acquisition agreement for the Eligible Project.
 2. Earnest money deposits, option payments, or other monetary consideration required to be made under the acquisition agreement prior to the close of escrow for the acquisition.
 3. The costs of preparing, noticing, and making any foreclosure bid in accordance with the legal requirements applicable to the relevant foreclosure proceedings; the funding of any and all amounts required to be paid prior to the ultimate acquisition bid at foreclosure; and the reasonable legal fees incurred by the Eligible Sponsor in connection with the bidding process.
- iii. The one-time Partnership Incentive Fee, if applicable.
- (2) **Pre-Acquisition Project Management Fee.** An IFM shall, upon the Eligible Sponsor's written and reasonably supported request, award the Eligible Sponsor a Pre-Acquisition Project Management Fee. Such written request shall include a written projection of the fee amount, which shall be supported by a reasonable allocation of staff costs and overhead expenses to the identified Eligible Project, as well as a reasonable allocation (or projected allocation) of such costs and expenses across all other unrelated FIHPP Projects for the same fiscal period. This fee shall fund the Eligible Sponsor's staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to the following pre-acquisition activities related to the Eligible Project:
- i. Identification of the Eligible Project for possible acquisition under the FIHPP Program;
 - ii. Preparation and submission of the Funding Application in connection with that Eligible Project;
 - iii. Coordination with the IFM to develop a budget for acquisition or acquisition/Rehabilitation;
 - iv. Review and assessment of all pre-acquisition due diligence materials in connection with the Eligible Project; and
 - v. Coordination with legal counsel in connection with the Eligible Project's acquisition agreement or foreclosure bid process.
- (3) An IFM shall make predevelopment funding available to an Eligible Sponsor in an expeditious manner and regardless of whether the Eligible Sponsor has yet identified a potential Eligible Project. An IFM should

award such funding in the amounts and at the times set forth in the approved Funding Application and memorialized in the funding agreement, subject to any timeframe specified in the STD 213, Standard Agreement between the Department and the AFM.

- (4) Such predevelopment funds, with the exception of the Preacquisition Project Management Fee, shall be provided in the form of a grant or a forgivable loan. The Preacquisition Project Management Fee shall be deemed earned when paid. All predevelopment funds, including the Preacquisition Project Management Fee, will be awarded without expectation of repayment so long as the Eligible Sponsor timely complies with all funding terms and conditions and acts in good faith and best effort to identify and acquire an Eligible Project. An Eligible Sponsor is not required to acquire the proposed Project as a condition of the loan or grant.

- (d) **Acquisition and Rehabilitation Funding.** An IFM shall also make acquisition and Rehabilitation funding available in the amounts and at the times set forth in the approved Funding Application and memorialized in the funding agreement, subject to any timeframe specified in the STD 213, Standard Agreement between the Department and the AFM. This funding shall be payable in the following amounts:

- (1) **Acquisition-Related Transaction Costs.** The IFM shall fund the following commercially reasonable Acquisition-Related Transaction Costs in connection with the Eligible Project, as applicable:

- i. Financing costs (i.e., points or funding origination fees);
- ii. Any commissions or finder's fees due and payable;
- iii. The portion of any applicable escrow and closing costs typically paid by a buyer in the county where the acquired Project is located (e.g., transfer taxes, escrow fees, document preparation and recording fees, title insurance premiums);
- iv. Any fees or costs typically paid at a foreclosure risk intervention sale;
- v. Any fees or costs typically paid by a successful bidder at a foreclosure sale; and
- vi. Interim Project Management Fee for the Eligible Sponsor to fund the following costs incurred from Project acquisition through Stabilization:
 1. Planning and overseeing any Rehabilitation;
 2. Overseeing any tenant relocation assistance;
 3. Verifying applicable tenant income and other qualifications;
 4. Project lease-up; and

5. Any co-op conversion of the Project.

- (2) **Direct Acquisition Costs.** The IFM shall fund the Eligible Sponsor's Direct Acquisition Costs, as defined by these Guidelines and as further specified below:
- i. The remaining unpaid portion of the Eligible Project's purchase price under the acquisition agreement or the full amount of the Eligible Sponsor's ultimate maximum foreclosure bid, with such bid amount in no event exceeding the amount of the Program award allocable to the projected foreclosure acquisition price as set forth in the approved Funding Application. In the event the Eligible Sponsor acquires the Eligible Project at a foreclosure sale for less than the maximum foreclosure bid amount funded by the Program, the excess amount shall be immediately returned to the IFM originally funding the same; and
 - ii. The Eligible Project's necessary and commercially reasonable Rehabilitation costs. If the Eligible Sponsor discovers additional rehabilitation needs after property acquisition that could not have reasonably been foreseen before acquisition, the Eligible Sponsor may apply for additional FIHPP funds for the additional rehabilitation.
- (3) **IFM's Transaction Costs.** The acquisition and Rehabilitation funding shall also fund the IFM's Transaction Costs, as further specified and described in Section 404(b) of these Guidelines.
- (e) **Funding Cap.** An Eligible Sponsor's total award of Pre-Acquisition Transaction Costs, Pre-Acquisition Project Management Fee, Acquisition-Related Transaction Costs, Interim Project Management Fee, and/or IFM's Transaction Costs for an Eligible Project shall not exceed the 10 percent limit on Transaction Costs set forth at Health and Safety Code section 50720.8, subdivision (a)(2).
- (f) **Capitalized Operating Subsidy Reserves.**
- (1) Multifamily Rental Housing Developments serving households with an average AMI of 50 percent of AMI or less are also eligible for a Capitalized Operating Subsidy Reserve (COSR) for up to 20 years of operating subsidy if there is a demonstrated financial need, as determined by the IFM.
 - (2) Up to \$175,000 per unit may be provided for a COSR to cover project operating deficits including an annual Post-Stabilization Project Management Fee during the period from and after Project Stabilization. The COSR shall be sized to cover anticipated operating deficits, including Post-Stabilization Project Management Fee payments, for a minimum of 20 years after Project Stabilization.
 - (3) The maximum per-unit COSR amount will be adjusted annually based upon increases in the Consumer Price Index. The adjustment will affect

only new projects that are granted COSRs after the adjustment; projects with existing COSRs will not be affected.

- (4) The AFM will determine the total amount of each project COSR based upon the individual project underwriting performed by the IFM pursuant to the requirements of these Guidelines.
- (5) Eligible uses include an annual Post-Stabilization Project Management Fee, consistent with the limits established by the AFM. The Post-Stabilization Project Management Fee will fund the Eligible Sponsor's staff costs and overhead expenses over the 20-year COSR term that are reasonably allocable to the following deliverables, as applicable:
 - i. Verification of applicable tenant income and other qualifications;
 - ii. Submission of annual operating budgets to the COSR Managing Entity;
 - iii. Submission of all other reports and information required under these Guidelines; and
 - iv. General Project management after Project Stabilization.

(g) Replacement Reserves.

- (1) As part of their FIHPP funding application, Eligible Sponsors of rental housing Projects shall provide a 20-year physical needs assessment detailing the projected capital needs over the first 20 years of Project operations. IFMs shall fully fund those capital needs in a replacement reserve.

(h) Maximum Funding Amounts.

- (1) The maximum funding amount per unit (for acquisition and for acquisition/Rehabilitation combined) is \$500,000 for multifamily properties or \$600,000 for single-family properties. Any COSR for which a multifamily Rental Housing Development may be eligible will be in addition to these per-unit maximums. The amount of FIHPP funding provided will vary based on the household income levels the Project will serve.
- (2) The maximum award amount per multifamily Rental Housing Development, including all eligible capital and COSR costs, is \$10,000,000.
- (3) These maximum amounts will be adjusted annually based upon year-over-year changes in the California Construction Cost Index as published by the Real Estate Services Division of the California Department of General Services.
- (4) IFMs may make additional funding available on a case-by-case basis for Projects that provide exceptional community benefit (for example, by providing very deep affordability to households at 30 percent AMI or less).

Section 503.3 Eligible Uses

- (a) Commercially reasonable costs associated with predevelopment, acquisition, and Rehabilitation are eligible uses of Program funds. Eligible uses of Program funds include, without limitation, the following:
- (1) Pre-acquisition due diligence costs
 - (2) Purchase costs
 - (3) Holding costs associated with the property such as taxes, insurance, and debt service
 - (4) Option fees
 - (5) Due diligence reports, including environmental assessments and property inspections
 - (6) Legal costs
 - (7) Architectural and engineering expenses, as applicable
 - (8) Appraisals
 - (9) Gap financing costs
 - (10) Construction costs associated with Rehabilitation
 - (11) Capitalized replacement reserves
 - (12) Relocation assistance costs
 - (13) Costs associated with the real property, such as tax liabilities or fines from property code violations
 - (14) Marketing and leasing
 - (15) Fees for consultants to assist general contractors in complying with prevailing wage requirements
 - (16) A Partnership Incentive Fee (available one time per Eligible Sponsor partnership) for experienced organizations who partner with less experienced and/or resourced organizations
- (b) **IFM's Transaction Costs.** The Eligible Sponsor shall, for each acquired Project, reimburse the IFM for the IFM's share of the Transaction Costs in connection with that Project's acquisition. The IFM's Transaction Costs are the IFM's financing costs, underwriting costs, and legal fees. Where the IFM is funding a Project with a loan, the Eligible Sponsor shall reimburse the IFM for those costs at close of escrow or the foreclosure sale date, as applicable. Where the IFM is funding a Project with a grant, the Eligible Sponsor shall reimburse the IFM for those costs at the time of the grant award pursuant to a negotiated written agreement. In all

cases, such costs are factored into and are payable from the Eligible Sponsor's loan or grant award for the acquisition/Rehabilitation. These costs are not considered administrative costs for purposes of Health and Safety Code section 50720.2, subdivision (b)(3).

- (c) No more than 25 percent of total FIHPP funds shall be used to support units serving households of Moderate Income.
- (d) Projects that are in default under Department financing are not eligible for FIHPP funding.
- (e) In no event may an IFM, or the AFM if acting also as an IFM, use any Program funds to acquire, Rehabilitate, develop, or own any Project or property in which the AFM and/or IFM has a direct or indirect ownership interest. For purposes of this provision, the term "ownership interest" means a fee simple interest, a leasehold interest, an option to purchase or to sell, a right of first refusal, or any other beneficial interest.
- (f) No Program loan or grant award, or any corresponding document evidencing or securing performance or repayment under the Program, shall be assigned, transferred, encumbered, financed, or otherwise alienated.

Section 503.4 Eligible Projects

- (a) Eligible properties for FIHPP acquisition are identified and set forth at paragraph (1) of subdivision (b) of Section 50720.2 of the Health and Safety Code.
- (b) A "preforeclosure intervention sale" is defined in accordance with subdivision (d) of Section 50720.4 of the Health and Safety Code.
- (c) A "foreclosure risk intervention sale" is defined in accordance with subdivision (c) of Section 50720.4 of the Health and Safety Code. Additional indicators of foreclosure risk at the time of sale include, but are not limited to, the following:
 - (1) The property has outstanding citations from a local government body for habitability problems.
 - (2) A local government body has identified the property as at risk of foreclosure.
- (d) Properties can be single-family homes, duplexes, triplexes, apartment buildings, townhomes, or condominiums.
- (e) Properties that are currently funded by the Department, or that have a pending funding application with the Department, are not eligible properties for FIHPP acquisition.
- (f) **Geographic Distribution.** To the extent possible, at least 45 percent of the total funds awarded under FIHPP should be awarded to Projects in Southern California, 30 percent should be awarded to Projects in Northern California, and 20 percent should be awarded to Projects in Rural Areas. For the purpose of this paragraph:

- (1) Southern California includes the counties of Kern, San Bernardino, San Luis Obispo, and all counties to the south of these counties;
- (2) Northern California includes all other counties of the state; and
- (3) "Rural Area" is defined to be consistent with the definition set forth at Health and Safety Code section 50199.21.

Section 503.5 Eligible Sponsor's Scope of Work

- (a) Eligible Sponsors shall be solely responsible for all of the following:
 - (1) Identifying potential Projects that may benefit from FIHPP assistance and that comport with FIHPP objectives.
 - (2) Making an initial assessment of whether each potential Project would satisfy Program requirements and represent a reasonable investment of public FIHPP money in view of relevant practical considerations (e.g., timing).
 - (3) Ascertaining the potential Project's profile as a foreclosure risk or its status in the pre-foreclosure or foreclosure process.
 - (4) Performing all preacquisition investigation and due diligence as is reasonably necessary and practicable.
 - (5) Requesting Program funding in a sufficiently timely manner.
 - (6) If awarded Program funds, acquiring and Rehabilitating the Project, and then operating and maintaining the Project over the full term of the applicable affordability restriction.
- (b) After funding origination and over the long term, Eligible Sponsors shall ensure that Projects are adequately capitalized for long-term success, including with adequate contingencies and operating and replacement reserves.
- (c) Eligible Sponsors have up to three (3) years for their Project to achieve Stabilization, as measured from the date that the IFM conditionally commits to fund that Project. The IFM can extend this deadline for up to another five (5) years at their discretion. As the Project approaches Stabilization, the Eligible Sponsor shall work closely with the IFM to identify how much (if any) outside financing the Project can/will secure from other sources to take out a portion of the initial FIHPP funding provided for acquisition and Rehabilitation.

Section 503.5.1 Homeownership Development Scope of Work

- (a) The Eligible Sponsor shall be responsible for all Rehabilitation (if applicable), as well as all management functions of the Project, including selection of the homebuyers and ensuring compliance with the affordability/resale restrictions and other provisions of these Guidelines and of the Regulatory Agreement.
- (b) **Reporting.**

- (1) Upon request and as specified by the AFM and/or IFM, the Eligible Sponsor shall provide necessary information to support the AFM's required reporting to the Department and/or the IFM's required reporting to the AFM.

Section 503.5.2 Rental Housing Development Scope of Work

- (a) The Eligible Sponsor shall be responsible for all management functions of the Project, including selection of the tenants and ensuring compliance with the affordability restrictions and other provisions of these Guidelines and of the Regulatory Agreement.
- (b) For Rental Housing Developments, the Eligible Sponsor is responsible for all Rehabilitation (if applicable), all repair and maintenance functions, including ordinary and routine maintenance, replacement of capital items, and extraordinary and/or unforeseen repairs and replacement necessary to maintain the health and safety of the Project and residents. The Eligible Sponsor shall ensure maintenance of residential units, commercial space, and common areas in accordance with local health, building, and housing codes.
- (c) **Reporting.**
 - (1) If the Project has received a COSR, the Eligible Sponsor must annually submit an actual operating budget for the Project to the COSR Managing Entity.
 - (2) On or before the end of the tenth year of Project operation, Eligible Sponsors of rental housing projects shall submit a 20-year cash flow projection to the COSR Managing Entity (if the Project has a COSR) or the Compliance Monitoring Entity. Eligible Sponsors of rental housing projects may submit a 20-year cash flow projection to the COSR Managing Entity (if the Project has a COSR) or the Compliance Monitoring Entity at any time if they anticipate problems covering operating expenses and/or building maintenance needs.
 - (3) Upon request and as specified by the AFM and/or IFM, the Eligible Sponsor shall provide necessary information to support the AFM's required reporting to the Department and/or the IFM's required reporting to the AFM.

Section 503.6 General Terms and Conditions

- (a) In no event shall the Department, the AFM, or the IFM have any liability to any Eligible Sponsor or to any other third party if Program funds are not timely delivered to complete an acquisition.
- (b) If a Project's take-out financing is less than the Project's FIHPP award for acquisition/Rehabilitation, then the outstanding balance of FIHPP funding (i.e., the difference between the take-out financing and the FIHPP funding) shall remain with the Project as long-term gap financing.

- (c) Notwithstanding any other provisions in these Guidelines, the Eligible Sponsor is only allowed to refinance the property for purposes of repaying FIHPP funding, funding necessary capital repairs after exhaustion of the replacement reserve or maintaining Project feasibility.

Section 503.6.1 Affordability Requirements

- (a) The Eligible Sponsor shall ensure that all vacant units are restricted in accordance with subdivision (b) of Section 50720.8 of the Health and Safety Code.
- (b) The detailed affordability requirements for each Project shall be outlined in the Project's Regulatory Agreement and/or deed restrictions for Homeownership Developments.

Section 503.6.2 Rent Standards

- (a) At no time shall Rents for households that meet income qualifications at the time of acquisition exceed 30 percent of household income.
- (b) Rents on Units with households that meet income qualifications at the time of acquisition may be increased by a maximum of the lesser of the allowable increase for similar buildings under an applicable local rent stabilization ordinance or up to 5 percent annually, up to the affordable Rent for the restricted income level for that unit as per the Project's Regulatory Agreement.
- (c) Rents on Units with over-income households at the time of acquisition must stay at their current level until the current lease term ends. At lease renewal, Rents may be increased by a maximum of the lesser of the allowable increase for similar buildings under an applicable local rent stabilization ordinance or up to 5 percent annually until the tenant is paying 30 percent of their household income for Rent, at which point the rent increase will match the rent increase percentage for other tenants in the building.

Section 503.6.3 Capitalized Operating Subsidy Reserves

- (a) The COSR Managing Entity will make an annual COSR disbursement to the Project based on the actual operating budget for the prior operating year.
- (b) If, after review of the actual operating budget for a given year, the COSR Managing Entity finds that the Project did not need as much from the COSR as it received that year, the COSR Managing Entity shall do one of the following:
 - (1) Provide less in COSR payments in a subsequent year to make up the difference between what the Project received and the actual amount of the operating deficit in the prior year;
 - (2) Require the Project to return to the COSR Managing Entity the amount provided that was in excess of the amount of the operating deficit. Any such amount returned shall be deposited to the Project's COSR subaccount; or

- (3) Recalculate the remaining amount of COSR funds available over the remaining years until the 20th year and inform the Sponsor of an allowable COSR withdrawal amount per year, with the intent of keeping the COSR available for the full 20 years.
- (c) If, after review of the Project's first five years of annual operating budgets, the COSR Managing Entity finds that the Project has used more than 25 percent of the total amount of the Project's COSR funds, the COSR Managing Entity shall conduct a review of the Project's finances and do one or more of the following:
 - (1) Continue to provide COSR funds at the rate needed for the Project to achieve fiscal integrity;
 - (2) Approve an increase in income levels served by the Project upon natural unit turnover to the minimum extent required for fiscal integrity, in 5 percent increments up to 80 percent AMI; or
 - (3) Impose annual limits for withdrawals of the remaining COSR funds.
 - (d) The COSR Managing Entity reserves the right, at its sole discretion, to implement the same COSR review process at years 10 and 15.
 - (e) If there are funds remaining in the Project COSR after the 20th year, the COSR Managing Entity reserves the right, at its sole discretion, to implement a similar process for determining the amounts available for allocation. Any funds remaining in the COSR after the 20th year shall continue to be disbursed by the COSR Managing Entity to the Project in accordance with the requirements of these Guidelines.

Section 503.6.4 Revisions to the Rental Housing Development's Unit Mix or to Any Income Restrictions

If the COSR Managing Entity or Compliance Monitoring Entity verifies that the Eligible Sponsor's 20-year cash flow projection demonstrates a financial need, they may approve an increase in income levels served by the Project upon natural unit turnover to the minimum extent required for fiscal integrity, in 5 percent increments up to 80 percent AMI.

Section 503.6.5 Nondiscrimination and Fair Housing

- (a) Eligible Sponsors shall adopt a written nondiscrimination policy requiring that no person shall, on the grounds of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), arbitrary characteristics, and all other classes of individuals protected from discrimination under federal or state fair housing laws, individuals perceived to be a member of any of the preceding classes, or any individual or person associated with any of the preceding classes be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Program funds.

Sponsors shall adopt written policies for providing reasonable accommodations, reasonable modifications, and auxiliary aids and services for effective communications with residents and applicants with disabilities.

- (b) Occupancy restrictions on all properties, including properties structured as cooperative ownership, shall be imposed and enforced in a manner which does not violate state or federal fair housing laws.

Section 503.6.6 Adaptability and Accessibility

The Eligible Sponsor shall ensure compliance with all applicable federal, state, and local laws regarding adaptability and accessibility.

Section 503.6.7 Violence Against Women Act

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

Section 503.6.8 Pet Friendly Housing Act of 2017

Eligible Sponsors shall authorize residents of the Rental Housing Development to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (Health & Saf. Code, § 50466), subject to reasonable rules to protect the health and safety of Project residents and to prevent damage to the Project.

Section 503.6.9 Prevailing Wage Law

Each Project is subject to state and federal prevailing wage law. Eligible Sponsors shall comply with these laws, as applicable. Accordingly, Eligible Sponsors should seek professional legal advice about prevailing wage law requirements and their potential obligations thereunder.

Section 503.6.10 Relocation Assistance

This funding is subject to the State of California's relocation assistance law, which is set forth at Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code and in the Department's implementing regulations (Cal. Code Regs., tit. 25, § 6000 et seq.). If the Project will cause the displacement of any persons, businesses, or farm operations, either directly or indirectly, then the Eligible Sponsor shall provide relocation benefits and assistance as required under the law. If relocation benefits and assistance are legally required, then the Eligible Sponsor's acquisition and Rehabilitation budget shall include sufficient funds to fully pay any and all costs in connection therewith. Each Eligible Sponsor shall also comply with federal Uniform Relocation Act requirements to the extent applicable.

Section 503.6.11 Article XXXIV

This funding is subject to the requirements of article XXXIV, section 1, of the California Constitution (Article XXXIV). The AFM/IFM shall work with the relevant local jurisdiction to ensure and document that each Project has either been approved by local voters, received a sufficient allocation of Article XXXIV authority, or falls within a relevant statutory exception to Article XXXIV under the Public Housing Election Implementation Law (PHEIL) (Health & Saf. Code, §§ 37000 – 37002). For example, the PHEIL exempts the following from the local voter requirements of Article XXXIV: (i) a development intended for owner-occupancy, rather than rental-occupancy (Health & Saf. Code, § 37001, subd. (c)); and (ii) a development involving the rehabilitation, reconstruction, improvement or addition to, or replacement of, dwelling units of a previously existing low-rent housing project, or a project previously or currently occupied by lower income households, as defined in Health and Safety Code section 50079.5 (Health & Saf. Code, § 37001, subd. (f)).

Section 503.7 Legal Documents

- (a) The Program funding, the Eligible Sponsor’s performance, and the relationship between the IFM and the Eligible Sponsor shall be evidenced, secured, and memorialized, as appropriate, by legally binding and mutually acceptable documents. Such documents include, without limitation and as applicable, the following:
 - (1) Note
 - (2) Deed of trust
 - (3) Use restriction or restrictive covenant
 - (4) Deed restriction
 - (5) Disbursement agreement for grant funding

Section 503.8 Breach/Violation

If the Eligible Sponsor breaches any term or condition of the Program grant or loan, or fails to comply with any Program requirement, and if the breach or violation is not duly cured within the relevant time period established in the legal documents, then the Eligible Sponsor forfeits the opportunity to apply for any additional Program funding, and is subject to all rights and remedies available to the IFM, the AFM, and/or the Department under the applicable Program funding documentation, at law or in equity.

ARTICLE VI. OPERATIONS.

Section 600. Technical Assistance

- (a) The Department will contract with a technical assistance provider team to support Fund Managers and Eligible Sponsors in implementing FIHPP.
- (b) The technical assistance provider team shall provide a variety of services to Eligible Sponsors and to prospective Eligible Sponsors, such as:

- (1) Access to data on FIHPP-eligible properties
 - (2) Legal assistance
 - (3) Peer learning opportunities
 - (4) One-on-one technical assistance from experts on a variety of topics related to acquiring, rehabilitating, and managing small properties as affordable housing, including property assessment and due diligence, developing budgets and pro formas, closing on eligible properties, complying with affordability restrictions, and building capacity for tenant ownership including housing cooperative formation and long-term project management.
- (c) The Department, through its CIAP, will provide dedicated technical support and consultations to Tribally Designated Housing Entities that are applying to or participating in the Program – whether at the AFM, IFM, or Eligible Sponsor level.

Section 601. Program-wide Compliance with State and Federal Laws, Rules, Guidelines and Regulations

- (a) The AFM entity, the IFM entity, and each Eligible Sponsor entity shall comply with all applicable state and federal laws, rules, guidelines, and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Program, each Project, its respective contractors or subcontractors, and any loan or grant activity.
- (b) The AFM entity, the IFM entity, and each Eligible Sponsor entity shall comply with all applicable state and federal laws, rules, guidelines, and regulations that pertain to nondiscrimination and fair housing. Such laws include, without limitation, the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); the Americans with Disabilities Act of 1990; the Fair Housing Act; the Fair Housing Amendments Act of 1988; the California Fair Employment and Housing Act; the Unruh Civil Rights Act; Government Code section 11135; Section 504 of the Rehabilitation Act of 1973; and all regulations promulgated pursuant to those statutes.

Section 602. Program Assessment

After the first \$100 million of funding has been distributed or within one year of the date upon which Eligible Sponsors may begin applying for FIHPP funding, the Department will work with Fund Managers, technical assistance providers and Eligible Sponsors to assess how the Program has been working and whether changes to the Program Guidelines are needed to best achieve the Program goals.

Section 603. Retention, Inspection, and Audit of Records

- (a) The AFM entity, each IFM entity, and each Eligible Sponsor entity is responsible for maintaining records which fully disclose its respective FIHPP-funded activities, as well as its respective reporting requirements under these Guidelines. Each AFM, IFM, and Eligible Sponsor entity shall maintain such records over the full

tenure of its respective participation in the FIHPP Program and for a period of five (5) years after such participation has ended, by termination or otherwise. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action commences during this required retention period, all records must be retained until a full and final resolution of the action.

- (b) The Department, as well as its appointees, employees, agents, and delegates, shall have the right, but not the obligation, to review, obtain, and copy all records pertaining to each entity's performance under this Program during the period of that entity's participation in the Program. Each and every entity shall provide any relevant information requested, and shall permit access to its premises, upon reasonable notice and during normal business hours, for the purpose of interviewing employees and inspecting and copying books, records, accounts, and other relevant material.
- (c) At any time during an entity's participation in the FIHPP Program, the Department may perform or cause to be performed a financial audit of that entity's FIHPP-related activities. At the Department's request, the entity shall provide, at its own expense, a financial audit prepared by a certified public accountant. The audit shall be performed by a qualified state, local, independent, or Department auditor. Where an independent auditor is engaged, the audit services agreement shall include a clause which permits the Department to have access to the independent auditor's relevant papers, records, and work product.
- (d) If there are audit findings, the relevant entity shall submit a detailed response to the Department for each audit finding. The Department will review the response. If the Department determines, in its sole and absolute discretion, that the response is satisfactory, the Department will conclude the audit process and notify the relevant entity in writing. If the Department determines, in its sole and absolute discretion, that the response is not satisfactory, the Department will contact the relevant entity, in writing, and explain the action required to cure any audit deficiencies. Such action could include the repayment of ineligible costs or other remediation.

APPENDIX A. DEFINITIONS.

- a. **AB 1010** –Health and Safety Code section 50406, subdivision (p), as subsequently amended. AB 1010 provides for the following: **(i)** Where the provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure would cause a violation or not satisfy the requirements of any FIHPP funding being provided to a Project, said requirements may be modified as necessary to ensure Program compatibility; and **(ii)** where provisions of tribal law, tribal governance, tribal charter, or difference in tribal entity or agency legal structure create minor inconsistencies with the requirements of any FIHPP funding being provided to a Project (as determined by the Director or a duly authorized designee thereof), the Department may waive said requirements, as deemed necessary, to avoid an unnecessary administrative burden.

- b. **AB 1010 Request** – means any request for an AB 1010 waiver or modification submitted by a Tribally Designated Housing Entity to the Director or to the Department’s California Indian Assistance Program.

- c. **Acquisition-Related Transaction Costs** – Acquisition-Related Transaction Costs are the necessary and commercially reasonable costs in connection with acquiring a Project, as specified and described in Section 503.2(d)(1) of these Guidelines. Such costs fall within the category of Transaction Costs, as defined by these Guidelines and Health and Safety Code section 50720.4, subdivision (g).

- d. **Administering Fund Manager** or **AFM** - The legal entity that is selected by the Department and obligated under the Standard Agreement, the documents contemplated by the Standard Agreement, and these Guidelines to oversee all aspects of Program implementation, operation, compliance, and enforcement.

- e. **Affiliated** – refers to a relationship that is closer than a mere unrelated third-party arm's length contractual relationship.

- f. **Affordable Housing Development** - Has the following meaning:
 - (a) Any acquisition, or acquisition and rehabilitation, of existing residential structures for the primary purpose of providing decent, safe, and sanitary housing for persons and families of Extremely Low, Very Low, Low, or Moderate Income. An “Affordable Housing Development” shall be either a “Rental Housing Development” or a “Homeownership Development” pursuant to this Program.

 - (b) An Affordable Housing Development may include any buildings, land, facilities, equipment, and/or fixtures that the IFM determines, pursuant to these Guidelines, is necessary or convenient to the provision of housing as contemplated by the Program.

- (c) In the context of an IFM's assessment of an Eligibility Applicant for experience, an "Affordable Housing Development" can also mean construction of new residential structures for renter- or owner-occupancy by persons and families of Extremely Low, Very Low, Low, or Moderate Income.
- g. **Applicant** – As indicated by context, the "Applicant" is either the "Eligibility Applicant" or the "Funding Applicant."
- h. **Area Median Income or AMI** - The most recent applicable county median family income published by California Tax Credit Allocation Committee (TCAC). For Eligible Sponsors that are Tribally Designated Housing Entities, if the HUD income for a county/parish located within a Tribally Designated Housing Entity's service area is lower than the United States median, then the Tribally Designated Housing Entity may use the United States median income limit.
- i. **Assisted Unit or Unit** – A Homeownership Development or Rental Housing Development dwelling or unit that is, or upon vacancy will be, subject to use, income, occupancy, and rent (or resale) restrictions, in accordance with Health and Safety Code section 50720.8, subdivision (b), as a result of funding provided under the FIHPP Program.
- j. **CIAP** – means the Department's California Indian Assistance Program.
- k. **COSR Managing Entity** – The legal entity that provides long-term management of the COSR for each Eligible Project. The COSR Managing Entity may be the AFM, or it may be one or more entities under subcontract with the AFM for performance of the COSR management duties with respect to certain or all Eligible Projects.
- l. **Capitalized Operating Subsidy Reserve or COSR** – A reserve established by the Administering Fund Manager or its designated agent to cover Project operating deficits, including Post-Stabilization Project Management Fee payments. A COSR is available to multifamily Rental Housing Developments serving households with an average AMI of 50 percent of AMI or less if there is a demonstrated financial need, as determined by the IFM.
- m. **Community Land Trust** – is defined in accordance with clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- n. **Compliance Monitoring Entity** – The legal entity that monitors long-term compliance for a given Project. The Compliance Monitoring Entity may be the AFM, or it may be one or more entities under subcontract with the AFM for performance of the monitoring duties with respect to certain or all Eligible Projects. Notwithstanding the AFM's delegation of these responsibilities through subcontract, the AFM shall remain ultimately responsible for, and report to the Department on, all aspects of Program compliance within the FIHPP portfolio.

- o. **Department or HCD** - The California Department of Housing and Community Development.
- p. **Direct Acquisition Costs** – Direct Acquisition Costs are the necessary and commercially reasonable costs in connection with acquiring a Project, as specified and described in Section 503.2(d)(2) of these Guidelines. Such costs include “property acquisition costs,” as defined at Health and Safety Code section 50720.4, subdivision (f).
- q. **Director** – means the director of the California Department of Housing and Community Development.
- r. **Eligibility Applicant** – A legal entity that applies to be evaluated under the qualification requirements of these Guidelines (e.g., experience, capacity) in order to be approved for participation in the FIHPP Program as an Eligible Sponsor.
- s. **Eligibility Application** – The application to become an Eligible Sponsor submitted by a legal entity to the AFM. A joint Eligibility Application may be submitted by two entities if one of the entities is relying on the other to supply the qualifying experience and/or capacity for an Eligible Sponsor determination.
- t. **Eligible Project** – A property eligible for FIHPP acquisition and funding pursuant to these Guidelines and Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code.
- u. **Eligible Sponsor** – A legal entity that qualifies as an “eligible borrower” under Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with these Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor. A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an “eligible borrower” pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor. An Eligible Sponsor may receive an award of Program funds for eligible activities from the IFM.
- v. **Extremely Low Income** - Households with Gross Incomes not exceeding 30 percent of Area Median Income as set forth in Health and Safety Code section 50106.
- w. **Fund Manager**– means an AFM, an IFM, or both.

- x. **Fund Monitoring and Reuse Account Agreement** – A legally binding and enforceable agreement entered into between the AFM and each IFM detailing the IFM’s obligations relative to fund monitoring, fund management, supervision, oversight, and enforcement, as well as the AFM’s oversight of such IFM performance, in form and content reasonably acceptable to the Department.
- y. **Funding Applicant** – An Eligible Sponsor that is applying for predevelopment, acquisition, and/or Rehabilitation funding by submitting a Funding Application to its choice of IFM within its geographic service area or to an available AFM/IFM hybrid. The foregoing choice remains within the Eligible Sponsor’s sole and absolute discretion.
- z. **Funding Application** – The application for predevelopment, acquisition, and/or Rehabilitation funding submitted by an Eligible Sponsor to its choice of IFM within its geographic service area or to an available AFM/IFM hybrid.
- aa. **Gross Income** - all income as defined in California Code of Regulations, title 25, section 6914.
- bb. **Guidelines** – means these Guidelines adopted by the Department, pursuant to Health and Safety Code section 50720.12, for the administration of the FIHPP Program.
- cc. **Homeownership Development** - means the acquisition in fee of an existing 1- to 25- attached or detached unit residential property for the primary purpose of developing the same into owner-occupied dwelling units that are each restricted to house an Extremely Low, Very Low, Low, or Moderate Income household. A Homeownership Development shall result in each household holding title to their respective unit in either fee simple title, or a fee simple equivalent in a cooperative or land trust ownership structure customary to affordable housing ownership.
- dd. **IFM’s Transaction Costs** – The IFM’s financing costs, underwriting costs, and legal fees in connection with a Project’s acquisition. The Eligible Sponsor shall reimburse the IFM for these costs from the award of acquisition/Rehabilitation funding relative to the acquired Project, and as further specified and described in Section 404(b) of these Guidelines. Such costs are not considered “administrative costs” for purposes of Health and Safety Code section 50720.2, subdivision (b)(3). Such costs fall within the category of Transaction Costs, as defined by these Guidelines and Health and Safety Code section 50720.4, subdivision (g).
- ee. **Implementing Fund Manager or IFM** - The legal entity that is obligated, pursuant to a contract with the AFM, to provide financing to an Eligible Sponsor for eligible activities subject to affordability restrictions.

- ff. **Interim Project Management Fee** – A fee payable by an IFM to an Eligible Sponsor that has received an award of Program funding to defray the Eligible Sponsor’s commercially reasonable staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to performing specified activities, as set forth in Section 503.2(d)(1) of these Guidelines, in connection with the awarded Project and during the period from the date of Project acquisition to the date of Project Stabilization. This fee constitutes an Acquisition-Related Transaction Cost, and it shall be payable from the award of acquisition/Rehabilitation funding.
- gg. **Lower Income or Low Income** - Households with Gross Incomes not exceeding 80 percent of Area Median Income as set forth in Health and Safety Code section 50079.5.
- hh. **Moderate Income** - Households with Gross Incomes not exceeding 120 percent of Area Median Income as set forth in Health and Safety Code section 50093.
- ii. **Monitoring Agreement** – A legally binding and enforceable agreement entered into between HCD and the AFM detailing the AFM’s Program monitoring and oversight obligations pursuant to these Guidelines.
- jj. **Partnership Incentive Fee** – A fee provided to an entity with qualifying experience and capacity in order to incentivize its partnership with a less experienced and/or resourced entity on a joint Eligibility Application and in all related Funding Applications and FIHPP-funded activities. The Partnership Incentive Fee is available on a one-time basis per Eligible Sponsor partnership. The Partnership Incentive Fee constitutes a Pre-Acquisition Transaction Cost, and it shall be payable, if applicable, from the first award of FIHPP funds to the joint Eligible Sponsor entities. The Partnership Incentive Fee is not available to joint Eligible Sponsor entities that are affiliated.
- kk. **Post-Stabilization Project Management Fee** – A fee payable by an IFM to an Eligible Sponsor that has received an award of Program funding to defray the Eligible Sponsor’s commercially reasonable staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to performing specified activities, as set forth in Section 503.2(f)(5) of these Guidelines, in connection with the awarded Project and during the period from Project Stabilization through the 20-year term of the COSR. This fee shall be payable only to the extent the Project is awarded COSR funding, and, in such case, shall be paid solely from such funding.
- ll. **Pre-Acquisition Project Management Fee** – A fee payable by an IFM to an Eligible Sponsor that has received an award of Program funding to defray the Eligible Sponsor’s commercially reasonable staff costs (e.g., salaries) and overhead expenses (e.g., supplies, rent, utilities, insurance, and office equipment) that are reasonably allocable to performing specified pre-acquisition activities, as set forth in Section 503.2(c)(2) of these Guidelines, in connection

with an identified Eligible Project. This fee constitutes a Pre-Acquisition Transaction Cost, and it shall be payable from the award of predevelopment funding.

- mm. **Pre-Acquisition Transaction Costs** – Pre-Acquisition Transaction Costs are the necessary and commercially reasonable costs of performing pre-acquisition due diligence with respect to an identified Eligible Project, as specified and described in Section 503.2(c)(1) of these Guidelines. Such costs fall within the category of Transaction Costs, as defined by these Guidelines and Health and Safety Code section 50720.4, subdivision (g).
- nn. **Program or FIHPP** – The Foreclosure Intervention Housing Preservation Program.
- oo. **Project** - means a Rental Housing Development or a Homeownership Development, including the development, rehabilitation, and operation thereof, as well as the financing structure and all agreements and documentation approved in connection therewith.
- pp. **Project Management Fee** – A Project Management Fee means a Pre-Acquisition Project Management Fee, an Interim Project Management Fee, and/or a Post-Stabilization Project Management Fee.
- qq. **Regulatory Agreement** – See **Use Restriction**.
- rr. **Rehabilitation** - means repairs and improvements to a substandard residential structure that are necessary to make it meet rehabilitation standards and to preserve its affordability. Substandard residential structure means a structure in which any of the conditions in Health and Safety Code section 17920.3 exist.
- ss. **Rent** - The same as “gross rent,” as defined in accordance with the Internal Revenue Code (IRC) (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits paid by the tenant, for use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC regulations, if applicable. For units assisted under the Housing Choice Voucher Program (HCV), or a similar rental or operating subsidy program, rent includes only the tenant contribution portion of the contract rent.
- tt. **Rental Housing Development** - Rental Housing Development means a structure or set of structures which comprises up to 25 rental 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. A Rental Housing Development may include households that are above Moderate Income at time of acquisition as part of an overall plan to rehabilitate units where housing for persons and families of Extremely Low, Very Low, Low, or Moderate Income is a primary goal. Vacancies of such units shall occur

through natural turnover. Subsequent tenancies of vacated units shall be restricted pursuant to Health and Safety Code section 50720.8, subdivision (b).

- uu. **Stabilization** shall mean the point in time where the Eligible Sponsor has completed Rehabilitation activities on the Project, has identified tenant income levels as necessary, has completed conversion to cooperative ownership (if applicable) and has optionally brought in takeout financing (as evidenced by enforceable funding commitments), and the taken-out portion of the FIHPP funds, if any, has been deposited into the reuse account.
- vv. **Standard Agreement** – The STD 213, Standard Agreement entered into between the Department and the selected AFM, which shall set forth and memorialize the AFM’s contractual implementation, oversight, and enforcement obligations under the FIHPP Program.
- ww. **Transaction Costs** – has the meaning set forth in Health and Safety Code section 50720.4, subdivision (g). Such costs include Preacquisition Transaction Costs, Acquisition-Related Costs, and an IFM’s Transaction Costs.
- xx. **Tribally Designated Housing Entity** – A Tribally Designated Housing Entity is defined in accordance with Section 4103 of Title 25 of the United States Code and Section 50104.6.5 of the Health and Safety Code. A Tribally Designated Housing Entity constitutes a nonprofit corporation pursuant to Health and Safety Code section 50091, and may participate as an Eligible Sponsor if it otherwise qualifies as an “eligible borrower” pursuant to Health and Safety Code section 50720.2, subdivision (b)(2); has submitted an Eligibility Application in accordance with the Guidelines; and has been duly approved to participate in the Program as an Eligible Sponsor.
- yy. **Use Restriction** - A recorded instrument that imposes use, income, occupancy, and rent (or resale) restrictions on a Project in accordance with Health and Safety Code section 50720.8, subdivision (b).
- zz. **Very Low Income** - Households with Gross Incomes not exceeding 50 percent of Area Median Income as set forth in Health and Safety Code section 50105.