

**Uniform Multifamily Regulations
Title 25, California Code of Regulations
Revised Proposed Amendments to Division 1, Chapter 7, Subchapter 19**

Revisions to the previous November 29, 2016 draft are in double-underline / ~~double~~ ~~strikeout~~ **bolded** format; revisions proposed in earlier drafts are shown in single, double underline / strikeout format, and in highlighted double underline / strikeout format.

Amend § 8300. Purpose and Scope, as follows:

- (a) These regulations provide uniform standards and program rules for multifamily rental housing developments assisted by the Department of Housing and Community Development.
- (b) When expressly incorporated by reference, some or all of the provisions of this Chapter shall apply, ~~to the extent externally referenced and incorporated,~~ to Department programs, including: the Joe Serna Junior Farmworker Housing Grant (JSJFWHG) Program (Chapter 7, subchapter 3, commencing with Section 7200); the Multifamily Housing Program (MHP) (Chapter 7, subchapter 4, commencing with Section 7300); and the HOME Investment Partnerships (HOME) Program (Chapter 7, subchapter 17, commencing with Section 8200), ~~the TOD Housing Program (operated under guidelines); the AB 1699 Loan Portfolio Restructuring Program (operated under guidelines); the Veterans Housing and Homelessness Prevention (VHHP) Program (operated under guidelines); the Governor's Homeless Initiative, a component of MHP, and the Affordable Housing and Sustainable Communities (AHSC) Program (operated under guidelines).~~ These regulations interpret and make specific the following Health and Safety Code Division 31, Part 2 statutes applicable to these programs: Health & Safety Code Division 31, Part 23.2, Chapter 2 (commencing with Section 50517.5), Chapter 16 (commencing with Section 50896), and Chapter 6.7 (commencing with Section 50675) and Chapter 3.9 (commencing with Section 50675); Health & Safety Code Division 31, Part 13, commencing with Section 53560; Public Resources Code Division 44, Part 1, commencing with Section 75200; and Military and Veteran's Code Division 4, Chapter 6, Division 3.2, commencing with Section 987.001.
- ~~(b)~~(c) The 2017 amendment to these regulations shall be effective on ("To be filled in by the Office of Administrative Law"), and shall apply prospectively to all Standard Agreements, as defined in Section 4.08 of the California State Contracting Manual, April 2015, as amended from time to time, governed by the authorities set forth in subdivision (a), that are executed or amended on or after the foregoing effective date. These regulations establish terms, conditions and procedures

~~for All amendments to these regulations shall apply to funds awarded under a Notice of Funding Availability or other funding announcement issued after the effective date of these regulations the subject amendments.~~

~~(d) Amendments to these regulations shall also apply to Projects with existing Department loans or grants when the respective borrower or recipient thereof requests and is granted by the Department a subordination to new senior debt, an extension of the Department loan or upon obtaining new tax credits for the Project.~~

~~(e) For Projects where the closing of the Department's loan occurred prior to the effective date of the most recently amended version of the 2017 amendments to these regulations, Sponsors may voluntarily elect to have the following provisions of the most recently amended version of these regulations apply prospectively:~~

~~(1) Subsections 8314(1)(B) and 8314(c), regarding asset management fees.~~

~~(2) Subsections 8314(c), (f) and (g), regarding supportive services costs.~~

~~(3) Section 8308, regarding operating reserves; and~~

~~(4) Section 8309, regarding replacement reserves.~~

~~The amended versions of these provisions shall apply only after the Sponsor obtains consents from other funding sources, as required by the Department, and after execution and recordation of such amendments to Department loan documents as the Department may require. The Department shall publish uniform instruments for this purpose, and these instruments shall not be subject to change or negotiation; Sponsors must agree to their exact terms.~~

~~(f) Sponsors may voluntarily elect to have the most recently amended version of these regulations apply, either in their entirety or as specified in subdivision (e), where the closing of the Department's loan occurs after the effective date of the recent amendments.~~

~~(g) Except as specified in subdivisions (e) and (f), in all cases where the amended regulations apply, they shall apply in their entirety. No piecemeal or partial application of selected provisions shall be allowed.~~

~~(h) For the purposes of this section, where there are two Department funding sources in question, the NOFA date, award date and loan closing date that is the later in time between the two, respectively, shall apply.~~

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

Amend § 8301. Definitions, as follows:

The following definitions govern this subchapter.

- (a) "Assisted Unit" means a Unit that is subject to the Program's rent and/or occupancy restrictions as a result of the financial assistance provided by the Program, as specified in the Regulatory Agreement.
- (b) "CalHFA" means the California Housing Finance Agency.
- (c) "Commercial Space" means any nonresidential space located in or on the property of a Rental Housing Development that is, or is proposed to be, rented or leased by the owner of the Project, the income from which shall be included in Operating Income.
- (d) "CPI" means the Consumer Price Index for All Urban Consumers, West Region, All Items, as published by the Bureau of Labor Statistics, United States Department of Labor.
- (e) "Debt Service Coverage Ratio" means the ratio of (1) Operating Income less the sum of Operating Expenses and required reserves to (2) debt service payments, excluding voluntary prepayments and non-mandatory debt service. In calculating Debt Service Coverage Ratio, the Department may include all Operating Income, and may exclude Operating Income that cannot be reasonably underwritten by lenders making amortized loans or that is required approved by the Department to be deposited into a reserve account to defray scheduled projected operating deficits.
- (f) "Department" means the Department of Housing and Community Development.
- (g) "Developer Fee" means the same as the definition of that term in California Code of Regulations, Title 4, Section 10302.
- (h) "Distributions" means the amount of cash or other benefits received from the operation of a Rental Housing Development and available to be distributed pursuant to Section 8314 to the Sponsor or any party having a beneficial interest in the Sponsor or the Project, after payment of all due and outstanding obligations incurred in connection with the Rental Housing Development. Distributions do not include payments for: deferred Developer Fee up to the limit set forth in Sections 8312, approved partnership and asset management fees, mandatory debt service, approved reserve accounts established to prevent tenant displacement resulting from the termination of rent subsidies, operations, maintenance, payments to ~~required approved~~ reserve accounts, land lease payments to parties that do not have a beneficial interest in the Sponsor entity, or

payments for property management or other services as set forth in the Regulatory Agreement for the Rental Housing Development. Distributions include releases to the Sponsor or any other party of reserve funds, where the use of these funds have not been approved by the Department for Project costs.

- (i) "Eligible Households" for MHP means "eligible household" as defined in Section 7301, for HOME this term means the same as "low income families" as defined in 24 CFR 92.2, and for JSJFWHG this term means the same as "agricultural household" as defined in Section 7202.
- (j) "Native American Lands" means real property located within the geographic boundary of the State of California that meets both the following criteria: it is trust land for which the United States holds title to the tract or interest in trust for the benefit of one or more Indian tribes or individual Indians, or is restricted Indian land for which one or more tribes or individual Indians holds fee title to the tract or interest but can alienate or encumber it only with the approval of the United States; and -the land may be leased for housing development and residential purposes under federal law.
- (jk) "Operating Expenses" means the amount approved by the Department that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management, taxes, licenses, and ~~the cost of supportive services that the Sponsor is obligated to provide under their TCAC regulatory agreement, case management and on-site supportive services coordination~~ Supportive Services Costs, but not including debt service, or required reserve account deposits, ~~or other supportive services costs.~~
- (kl) "Operating Income" means all income generated in connection with operation of the Rental Housing Development including rental income for Assisted Units and non-Assisted Units, rental income for Commercial Space or commercial use, ~~(collectively "Commercial Space revenues"),~~ laundry and equipment rental fees, rental subsidy payments, and interest on any accounts, other than approved reserve accounts, related to the Rental Housing Development. "Operating Income" does not include security and equipment deposits, payments to the Sponsor for ~~s~~ Supportive ~~s~~ Services ~~(except for funds applied towards the cost of on-site supportive service coordination)~~ not included in the Department-approved operating budget, cash contributed by the Sponsor, or tax benefits received by the Sponsor. If the Project includes Commercial Space subject to a master lease and one or more subleases, "Commercial Space revenues" for the Commercial space shall be deemed to equal the scheduled master lease payment amount, which shall be set at an amount not less than 75 percent of estimated market rent, except where the Commercial Space is

~~subleased to one or more nonprofit corporations at a below-market rental rate, in which case the master lease payment shall be set at an amount not less than 90 percent of the scheduled sublease payments.~~

~~Estimated market rent shall be determined by the Department based on a market study or appraisal commissioned by a lender that is providing amortized debt to the Project, or by the Project's equity investor.~~

- (~~lm~~) "Program" means the Department funding program or programs providing assistance to the Project.
- (~~mn~~) "Project" means a Rental Housing Development, and includes the development, the construction or rehabilitation, and the operation thereof, and the financing structure and all agreements and documentation approved in connection therewith.
- (~~no~~) "Regulatory Agreement" means the written agreement between the Department and the Sponsor that will be recorded as a lien on the Rental Housing Development to control the use and maintenance of the Project, including restricting the rent and occupancy of the Assisted Units.
- (~~op~~) "Rental Housing Development" means a structure or set of structures ~~with common financing, ownership, and management and~~ which collectively contains 5 or more Units (except that HOME projects may contain fewer than 5 Units.). "Rental Housing Development" does not include any "health facility" as defined by Section 1250 of the Health and Safety Code or any "alcoholism or drug abuse recovery or treatment facility" as defined by Section 11834.02 of the Health and Safety Code. ~~Where a Rental Housing Development is located on non-contiguous parcels, all of the parcels shall be governed by similar tenant selection criteria, serve similar tenant populations and have similar rent and income restrictions.~~
- (~~pq~~) "Restricted Unit" means any Assisted Unit and any Unit that is subject to Rent and occupancy restrictions that are comparable to those applicable to Assisted Units. Restricted Units include Units subject to a TCAC regulatory agreement, and all Units subject to similar long-term, low-income or occupancy restrictions imposed by other public agencies.
- (~~qr~~) "Rural Area" means the same as defined in Section 50199.21 of the Health and Safety Code.
- (~~rs~~) "Sponsor" means the legal entity or combination of legal entities with continuing control of the Rental Housing Development. Where the borrowing entity is or will be organized as a limited partnership, Sponsor includes the general partner or general partners who have effective control over the operation of the partnership, or, if the general partner is controlled

by another entity, the controlling entity. Sponsor does not include the seller of the property to be developed as the Project, unless the seller will retain control of the Project for the period of time necessary to ensure Project feasibility as determined by the Department.

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

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

(1) the cost of providing tenants with information on and referral to social, health, educational, income support and employment services and benefits, coordination of community building and educational activities, and individualized needs assessment and individualized assistance with obtaining services and benefits;

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

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

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

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

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

Amend § 8302. Restrictions on Demolition, as follows:

- (a) Proposed projects involving new construction and requiring the demolition of existing residential Units are eligible only if the number of bedrooms in the new Project is at least equal to the total number of bedrooms in the demolished structures. The new Units may exist on separate parcels provided all parcels are part of the same Rental Housing Development ~~(with common ownership, financing and management)~~ meeting the requirements of ~~sub~~section 8303(b).
- (b) The Department may approve exceptions to subdivision (a) where it determines that such exceptions will substantially improve the livability of the remaining units, or serves some other compelling public policy objective. For example, it may approve a reduction in the number of single room occupancy (SRO) units where necessary to add private cooking and bathing facilities, or a reduction in the number of bedrooms in public housing necessary to meet federal requirements.

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

Amend § 8303. Site Control Requirements, as follows:

Section 8303. Site Control Requirements and Scattered Site Projects.

- (a) At the time of application, a ~~s~~Sponsor must have site control of the of the proposed Project property, in the name of the Sponsor or an entity controlled by the Sponsor, by one of the following means:
- (a1) fee title, which, for tribal trust land, may be evidenced by a title status report or an attorney's opinion regarding chain of title and current title status;
- (b2) a leasehold interest on the Project property with provisions that enable the lessee to make improvements on and encumber the property provided that the terms and conditions of any proposed lease shall permit, prior to loan closing, compliance with all Program requirements, including compliance with Section 8316;
- (e3) an enforceable option to purchase or lease which shall extend through the anticipated date of the Program award as specified in the ~~Notice of Funding Availability~~ **NOFA**;

- (d4) a disposition and development agreement with a public agency;
 - (e5) an agreement with a public agency that gives the Sponsor exclusive rights to negotiate with that agency for acquisition of the site, provided that the major terms of the acquisition have been agreed to by both parties; or
 - (f6) a land sales contract, or other enforceable agreement for the acquisition of the property.
- (b) If the Project has multiple contiguous or non-contiguous sites, the configuration of those sites must satisfy all provisions of the statutes governing the applicable Department funding program or programs, and meet the following additional requirements:
- (1) all of the developments on the various sites must have a single owner and property manager, at the time of the closing of the Department loan, and with the exception of any non-residential condominium units;
 - (2) if there is any debt with required payments that has a deed of trust recorded in a position senior to the Department loan, the debt and associated security instruments of all lenders senior to the Department must be the same for all sites, and multiple senior lenders are shall not be allowed;
 - (3) there must be a single annual report schedule of rental income and annual audit of project operations covering all sites;
 - (4) the Department must be secured against all sites, with lien priority relative to local public agency lenders and use of cash flow available for residual receipts loan payments determined in accordance with Section 83158314(a)(2)(A) and (B) of these regulations (with each lender's share of residual receipts proportionate to their share of total Department and local government assistance for the entire multi-site project); and
 - (5) The Department must be named on applicable insurance policies subject to the Department's approval covering all sites, including but not limited to title insurance policies and other policies with coverage for hazard and liability insurance for the Rental Housing Development, including flood insurance if applicable. The Department shall be named as a loss payee or an additional insured on all such policies. Such policies also shall provide for notice to the Department in the event of any lapse of coverage and

in the event of any claim thereunder. Insurance must be obtained and maintained for the term of the Department's program loan. meeting Department requirements.

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

Amend § 8305. Tenant Selection, as follows:

- (a) Sponsors shall select only Eligible Households as tenants of vacant Assisted Units, using procedures approved by the Department that include:
- (1) reasonable criteria for selection or rejection of tenant applications which ~~may include priority status under a local coordinated entry (also known as centralized or coordinated assessment, or coordinated access) system established pursuant to federal regulations governing the Continuum of Care Program (including 24 CFR 578.7) and~~ shall not discriminate in violation of any federal, state or local law governing discrimination, or any other arbitrary factor;
 - (2) prohibition of local residency requirements;
 - (3) prohibition of local residency preferences, except ~~where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas; where there is conclusive evidence satisfactory to the Department that the preference as applied will comply with fair housing law and:~~
 - ~~(i)(A)~~ where accompanied by an equal preference for employment in the local area and applied to areas not smaller than municipal jurisdictions or recognized communities within unincorporated areas, or
 - ~~(ii)(B)~~ where a local ordinance grants a preference to neighborhood residents who have been or are about to be displaced;
 - (4) tenant selection procedures that include the following components, and that are available to prospective tenants upon request:
 - (A) selection of tenants based on order of application, lottery or other reasonable method approved by the Department, including priority status under a local coordinated entry (also known as centralized or coordinated assessment, or coordinated access) system established pursuant to federal regulations governing the Continuum of Care program, 24 Code of Federal Regulations Part 578 (June 6, 2017) hereby incorporated by reference; and that do
 - (B) does not result in encourage or require applicants ~~to waiting~~ in a physical line;

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

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

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

~~(E)~~(F)targeting specific ~~s~~Special ~~n~~Needs ~~p~~Populations (**“Special Needs Population” has the same meaning as defined section 7301(s)**) in accordance with the Regulatory Agreement and applicable laws; and

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

(b) ~~With the exceptions noted below,~~ Sponsors shall rent vacant units to households with no less than the number of people specified in the following schedule:

<i>Unit Size</i>	<i>Minimum Number of Persons in Household</i>
SRO	1
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	6
5-BR	8

~~Exceptions:~~Exceptions:

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

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

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

~~(1) persons of different generations are not required to share a bedroom;~~

~~(2) children of opposite sex five years and older are not required to share a bedroom;~~

~~(3) live-in aides may be allocated a separate bedroom; and~~

~~(4) for units covered under Housing Choice Vouchers or project-based Section 8 rental assistance contracts, Sponsors may defer to the local housing authority's determination of appropriate unit occupancy.~~

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

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

NOTE: Authority cited: Sections 50406(n)², 50517.5(a)(1), 50517.5(a)(3)², 50675.1(~~ed~~)², 50675.11², 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(d)(3), 50517.5(d)(5), 50517.5(e)(2)², 50675.1(c)², 50675.8(a)(1)², 50896.1(a)² Health and Safety Code²; and 24 CFR Sections 92.303, 92.350 and 92.351.

Amend § 8307. Rental Agreement and Grievance Procedure, as follows:

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

- (1) provisions requiring good cause for termination of tenancy. One or more of the following constitutes "good cause":
 - (A) failure by the tenant to maintain applicable eligibility requirements under the Program or other eligibility requirements as approved by the Department;
 - (B) material noncompliance by the tenant with the lease, including one or more substantial violations of the lease or habitual minor violations of the lease which:
 - (i) adversely affect the health and safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related Project facilities;
 - (ii) substantially interfere with the management, maintenance, or operation of the Rental Housing Development; or
 - (iii) result from the failure or refusal to pay, in a timely fashion, Rent or other permitted charges when due. Failure or refusal to pay in a timely fashion is a minor violation if payment is made during the 3-day notice period;
 - (C) material failure by the tenant to carry out obligations under federal, state or local law;
 - (D) subletting by the tenant of all or any portion of the Assisted Unit;
 - (E) any other action or conduct of the tenant constituting significant problems which can be reasonably resolved only by eviction of the tenant, provided that the Sponsor has previously notified the tenant that the conduct or action in question would be considered cause for eviction. Examples of action or conduct in this category include the refusal of a tenant, after written notice, to accept reasonable rules or any reasonable changes in the lease or the refusal to recertify income or household size; or
 - (F) for Transitional Housing, the end of the maximum term prescribed for tenant occupancy by the Program operated in a particular Transitional Housing Project.
- (2) a provision requiring that the facts constituting the grounds for any eviction be set forth in the notice provided to the tenant pursuant to state law;

- (3) notice of grievance procedures for hearing complaints of tenants and appeal of management action; and
 - (4) a requirement that the tenant annually recertify household income and size.
- (b) The Sponsor shall adopt an appeal and grievance procedure to resolve grievances filed by tenants and appeals of actions taken by Sponsors with respect to tenants' occupancy in the Rental Housing Development, and prospective tenants' applications for occupancy. The Sponsor's appeal and grievance procedure shall be subject to Department approval and, at a minimum, shall include the following:
- (1) a requirement for delivery to each tenant and applicant of a written copy of the appeal and grievance procedure;
 - (2) procedures for informal dispute resolution;
 - (3) a right to a hearing before an impartial body, which shall consist of one or more persons with the power to render a final decision on the appeal or grievance; and
 - (4) procedures for the conduct of an appeal or grievance hearing and the appointment of an impartial hearing body.
- (c) Neither utilization of, nor participation in any of the appeal and grievance procedures shall constitute a waiver of or affect the rights of the tenant, prospective tenant, or Sponsor to a trial de novo or judicial review in any judicial proceeding which may thereafter be brought in the matter.
- (d) This section shall not be construed to pre-empt or supercede requirements established by local government which further limit good cause for eviction.
- (e) For Projects located on Native American Lands, the Department may approve exemptions to the requirements of this section, based on the unique legal requirements applicable to Native American Lands.

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

Amend § 8308. Operating Reserves, as follows:

The Sponsor shall establish an operating reserve for the purpose of defraying ~~potential operating shortfalls arising from unforeseen circumstances resulting from= Department-~~approved Operating Expenses exceeding= Operating Income, beyond the rent-up period.

- (a) Withdrawals from the operating reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for an eligible withdrawal from the operating reserve within 30 days from documented receipt of the request, that request shall be deemed approved.
- (b) The initial deposit to the operating reserve shall be funded from development funding sources in an amount determined by the Department, which shall be not less than the total of the following: 4 months of projected Operating Expenses (excluding the cost of on-site ~~s~~Supportive ~~s~~Services coordination), 4 months of required replacement reserve deposits, and 4 months of non-contingent debt service. For projects with tax credits, the requirement shall be 3 months of these items. In setting the initial funding requirement, the Department shall consider factors including, but not limited to the projected level of Project cash flow, the adequacy of the operating budget, Project location, local market characteristics, the number of sites, and Project design.
- (c) Sponsor shall fully replace any withdrawals from the Operating Reserve, up to the minimum initial deposit amount specified in subsection (b) above, as may be modified in accordance with subsection (d) or (e) below, using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.
- (d) In the absence of some extraordinary occurrences, such as litigation affecting the project or construction defects, and Upon occurrence of both of the following events, the Department ~~may~~shall reduce the required minimum balance: (i) operation at a debt service coverage ratio of 1.15 or greater for 5 years; and (ii) operation at an Operating Expense coverage ratio of 1.08, where Operating Expense ratio is defined to equal effective gross income, less required replacement reserve deposits and non-contingent debt service, divided by total Operating Expenses, not including the approved cost of ~~s~~Supportive ~~s~~Services coordination.
- (e) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the Operating Reserve, where the Department determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to ~~the HUD Section 811, and 202 or direct federal loan=~~ or grant programs, including the Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA, the Department may also defer to the operating reserve requirements of these agencies during the time such projects are regulated by

~~HUD~~ a federal agency or CalHFA, and not require deposits in the amounts specified in subsection (b).

- (f) Where all Project development funding sources are legally precluded from using their funds to capitalize the operating reserve as required by subsection (b), the Sponsor may fund this account out of Operating Income, provided that cash flow is sufficient to reasonably ensure that the required balance can be accumulated within six years of initial occupancy.
- (g) In no event shall this reserve be used to fund limited partner exit costs, except for amounts in excess of the balance required by the Department.

NOTE: Authority cited: Sections 50406(n)~~2~~, 50517.5(a)(1), 50517.5(a)(3)~~2~~, 50675.1(~~ed~~)~~2~~, 50675.11~~2~~, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5, 50675.5(b)(8), and 50896.1(a)~~2~~ Health and Safety Code.

Amend § 8309. Replacement Reserves, as follows:

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

- (a) Withdrawals from the replacement reserve shall require prior written approval of the Department. Should the Department fail to take action on a request for an eligible withdrawal from the replacement reserve within 30 days of documented receipt of the request, that request shall be deemed approved.
- (b) The replacement reserve shall be funded from Operating Income~~2~~, development sources or a combination of Operating Income and development sources.
- (1) For new construction or conversion Projects ~~submitting applications in 2016~~, the initial amount of annual deposits to the replacement reserve account shall be equal to at least the lesser of 0.6% of estimated construction costs associated with structures in the Project, excluding construction contingency and general contractor profit, overhead and general requirements~~2~~, or \$500 per unit. ~~For projects~~

~~submitting applications, after 2016, the initial amount of annual deposits shall be \$600\$500 per unit increased for new projects each year by the change in CPI since 2016.~~ However, the Department may approve a different amount based on the results of a third-party ~~a~~ reserve ~~analysis study~~, which it may require, or other reliable indicators of the need for replacement reserve funds over ~~the term of the Program loan~~ the initial 20 years of operation, or, in the case of transactions involving restructuring of existing Department loans, 20 years of operations after the restructuring.

- (2) For rehabilitation Projects, the initial amount of annual deposits to the replacement reserve account shall be determined by the Department based on the results of a third-party physical needs assessment or other reliable indicators of the need for replacement reserve funds over ~~the term of the Program loan~~ the initial 20 years of operation. In its initial underwriting, in the absence of an approved physical needs assessment or other reliable indicators of the need for replacement reserve funds, the Department may assume that the initial amount of annual deposits shall be ~~\$600\$500 per unit, for applications submitted in 2016, and \$600 increased by the change in CPI since 2016, for applications submitted in subsequent years.~~
- (3) The Department may periodically adjust the amount of required deposits to the replacement reserve for a particular Project based on the results of reserve ~~analysis studies~~ or other reliable indicators of the need for replacement reserve funds over time.
- (4) The Department may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the replacement reserve, where the Department determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to ~~the HUD Section 811, and 202, 202 or direct federal loan or grant programs, including=~~ Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA ~~or the Rural Housing Service of the United States Department of Agriculture~~, the Department may also defer to the replacement reserve requirements of these agencies during the time such projects are regulated by HUD, ~~a federal agency or CalHFA or the Rural Housing Service of the United States Department of Agriculture.~~
- (5) **If the Department requires a reserve study because the Department determines the reserve is inadequate due to annual replacement costs exceeding or being reasonably likely to exceed the amounts deposited to the reserve, or due to a request by the Sponsor to adjust the required reserve amount, the analysis must result in a**

due diligence report that examines the current physical conditions at property(ies), specifies repairs or replacements needed immediately, and budgets for the long-term capital repair and replacement needs during the life of an asset, such as the results of using the it may require that this study be performed using the CNA Capital Needs Assessment eTool, currently under development by the U.S. Department of Housing and Urban Development federal government.

NOTE: Authority cited: Sections 50406(n)~~2~~, 50517.5(a)(1), 50517.5(a)(3)~~2~~, 50675.1(~~ed~~)~~2~~, 50675.11~~2~~, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(d)(1), 50675.5(b)(8), and 50896.1(a)~~2~~, Health and Safety Code.

Amend § 8310. Underwriting Standards, as follows:

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

- (a) Residential vacancy rates shall be assumed to be 5%, unless a different figure is required by another funding source (including TCAC) or supported by compelling market evidence.
- (b) Vacancy rates for Commercial Space shall be assumed to be 50% ~~unless the Department determines that at least one of the following two conditions apply, in which case it may assume a rate of 25%:~~
 - ~~(1) the Sponsor demonstrates to the satisfaction of the Department all of the following four items:~~
 - ~~(A) the Project is located in an urbanized area with substantial similar commercial space nearby;~~
 - ~~(B) the Project's specific location and layout makes it highly suitable for prospective tenants; and~~
 - ~~(C) the projected rental rate does not exceed the average for competitive properties; and~~
 - ~~(D) the vacancy rate for competitive properties is low, and is expected to remain low, taking into account the impact of planned new competitive developments; or except the Department may use the vacancy loss assumption of the Project's senior~~

lender or equity investor- under either of the following circumstances:

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

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

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

(2) where the Commercial Space has been ~~pre-leased to a new, highly creditworthy tenant or tenants~~ national or regional firm widely recognized by the general public, and the term of the lease ~~for a term of not less than five years, or is subject to an existing lease with a highly creditworthy tenant or tenants that~~ extends at least five years past the projected date of construction completion.

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

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

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

(1) less than 1.10:1 or

- (2) greater than 1.20:1, except where a higher first year ratio is necessary to:
- (A) ~~projected~~ first-year cash flow after debt service and required reserve deposits is equal to or less than 12 percent of operating expenses or;
 - (B) ~~where a higher first year ratio is necessary to meet either the requirements of subsection (h) or;~~
 - (C) meet CalHFA's standard underwriting requirements or those of a direct federal lending program; or
 - (D) project a positive cash flow over 20 years, using the assumptions specified in subdivision (i).

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

~~These requirements shall not apply to Projects funded under the HUD Section 811 and 202 programs. The Department may modify these requirements for Projects receiving operating or rental subsidies structured to allow for breakeven operation, or for operation at a level of cash flow that differs from that resulting from application of these requirements.~~

- (f) Balloon payments are not allowed on senior debt, ~~except as follows where both:~~
- ~~(1) for existing Department funded Projects undergoing rehabilitation without new Department funding; or~~
 - ~~(2) where the Department's regulatory agreement is recorded senior to all other lender liens.~~

~~In both cases, (1) the Sponsor demonstrates to the Department's satisfaction that the Project will generate sufficient sum of net operating income, and income obtained through refinancing, to be able will be sufficient to pay the balloon payment when due; and~~

~~(2) The Department's affordability covenant or regulatory agreement (collectively "Use Restriction") is recorded in a position that is senior to the debt with a balloon payment. Any such Use Restriction may include provisions that, upon foreclosure of the debt instrument securing such debt, allow the Use Restriction to be amended to delete any portion of the Use Restriction that is not necessary to ensure the continued restriction of the project to the same affordability level for~~

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

- (g) Balloon payments ~~and~~ are allowed on junior debt during the term of the Program loan only where the Department determines that the balloon payment will not jeopardize project feasibility.
- (gh) Variable interest rate debt shall be underwritten at the ceiling interest rate, unless the Department determines that using a lower interest rate assumption will not jeopardize project feasibility.
- ~~(hi) Senior debt yield maintenance charges or prepayment penalties applicable after the fifteenth anniversary of the recordation of the senior loan (or conversion of the senior loan from construction to permanent financing) shall not exceed one percent of the outstanding senior loan balance.~~
- (hji) The Project must demonstrate a positive cash flow for 15 years, using income and expenses increase rate assumptions specified in California Code of Regulations, Title 4, Section 10327. If projected Project income includes rental assistance or operating subsidy payments under a renewable contract, the Department may assume that this contract will be renewed, where the renewal of the rental assistance or operating subsidy is likely.
- ~~(ik)~~ Reserved For projects using low income housing tax credits, the agreements between the ownership entities must allow the Sponsor or an entity directly controlled by the Sponsor to acquire, at the end of the fifteen year tax credit compliance period, either all of the assets of the ownership entity, including the real estate, fixtures, personal property and any cash accounts, or the entire interests of the investor entity and any other interests not already controlled by the Sponsor, at a price that minimizes the risk that the acquisition will require an outlay of cash, and

~~without reserves being spent prematurely, as determined by the Department. This requirement may be satisfied through a purchase option that clearly allows the Sponsor or an entity controlled by the Sponsor to acquire all of the assets of the owner at a price equal to the greater of:~~

~~(1) an amount equal to the then fair market value of the Project plus the fair market value of any cash accounts (net of current liabilities) associated with the Project; or~~

~~(2) the amount of outstanding debt on any amounts owed by the ownership entity related to the Project, including any loans made by the Sponsor or entity controlled by the Sponsor, plus all unpaid amounts required to be paid to the investor under the partnership documents, not including taxes arising from the acquisition transaction.~~

~~If the purchase price is set at fair market value, this value shall be established through an appraisal approved by the Department.~~

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

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

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

Amend § 8311. Limits on Development Costs, as follows:

(a) ~~Project development costs must be reasonable compared to development costs for other similar developments of modest design in the general area of the Project,~~ as measured by the ratio of the project's total eligible basis to its total adjusted threshold basis limits, calculated at the time of application for Department funds. Both total eligible basis and total adjusted basis limits shall be computed in accordance with TCAC regulations and procedures set forth in 4 CCR secs. 10325 - 10327, except as follows:

(1) There shall not be an adjustment of threshold basis limits based on units that will be income and rent restricted at or below certain area

median income levels, such as that in Title 4 ~~CCR~~ California Code of Regulations, Section 10327(c)(5)(C) as in effect as of September 2016.

(2) Costs shall be deemed reasonable under this section if the ratio calculated pursuant to the above subdivision (a) is less than ~~150~~160 percent.

(b) If the ratio calculated above in subdivision (a) exceeds ~~160~~170 percent, calculated based on actual development costs following completion of construction, the ~~s~~Sponsor shall incur up to 20 negative points which may, in the Department's discretion, be assessed, and which negative points shall reduce the ~~s~~Sponsor's score by the same amount for future applications to any of the Department's NOFA's for any of the Department's programs, and may continue to be repeatedly assessed for any and all successive NOFAs for a period of up to three years following the date on which the Department determined that the cost exceeded the 170 percent limit.

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

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

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

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

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

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

Amend § 8312. Developer Fee, as follows:

- (a) For projects not utilizing low income housing tax credits, Developer Fee shall not exceed the amount calculated in accordance with subsections (1), (2) or (3) below, ~~with the exception of LIHTC Projects which shall also be subject to subsection (b).~~ The per unit amounts will be adjusted in thousand dollar increments in accordance with changes in the CPI when, following the year ~~2000~~2016, the CPI has indicated the next full thousand dollar increment has been reached.
- (1) For new construction Projects and Projects where the contract for the rehabilitation work equals or exceeds ~~\$25,000~~35,000 per ~~u~~Unit:
- (A) For the first 30 Units, ~~\$20,000~~26,000 per Unit.
- (B) For each Unit in excess of 30, ~~\$7,500~~10,500 per Unit.
- (2) For other Projects involving acquisition and rehabilitation where the contract amount for the rehabilitation work, excluding contractor profit and overhead, equals or exceeds ~~\$7,500~~10,500 per Unit and is less than ~~\$25,000~~35,000 per ~~u~~Unit:
- (A) For the first 30 Units, ~~\$9,000~~12,000 per Unit.
- (B) For each Unit in excess of 30, ~~\$4,500~~5,500 per Unit.
- (3) For all other Projects, \$2,000 per Unit.
- (b) For LIHTC Projects ~~utilizing 9% -competitive low income housing tax credits,~~ Developer Fee payments shall not exceed the ~~lesser of \$1,200,000 or the maximum sum of:~~
- ~~(1) the amount that may~~could be included in eligible basis ~~for a 9% competitive tax credit applications,~~ amount that may be included in project costs pursuant to California Code of Regulations, Title 4, Section 10327. ~~;~~ ~~plus~~
- ~~(2) 15% of the tax basis for non-residential costs included in the Project,~~ consistent with Section 10327. ~~;~~
- ~~(3) for 4% tax credit projects, any deferred Developer Fee (payable exclusively from operating cash flow), allowed in eligible basis under TCAC regulations; and If the Developer Fee limit established pursuant to this subsection exceeds that established in subsection (a) above, the difference shall be deferred and payable from operating~~

cash flow pursuant to Section 8314(a)(1)(A).

- (c) For Projects utilizing 4% percent tax credits, Developer Fee payments shall not exceed the lesser of \$3,500,000 or the sum of:
- (1) the limit that would have applied if the project was utilizing competitive 9% low income housing tax credits, as specified in subdivision (b) the amount that could be included in project costs pursuant to **Title 4, California Code of Regulations, Section 10327** if the project was receiving 9% competitive credits; plus
 - (2) any remaining deferred Developer Fee (payable exclusively from operating income) that is allowed in eligible basis under **Title 4, California Code of Regulations, Section 10326** of the TCAC regulations.
- (Subdivision ~~section (1)~~ (c) limits Developer Fee paid from development funding sources.)
- ~~(c)~~ — Deferred Developer Fee is payable out of cash flow pursuant to Section 8314. For LIHTC Projects, the amount of the deferred Developer Fee is also subject to the limits on deferred developer fee in the TCAC regulations and any applicable federal statutes or regulations.
- ~~(d)~~ ~~(d)~~ ~~(4)~~ The dollar value of any capital contribution of funds or real property made by the Sponsor or an affiliate, as approved by the Department, for Project development costs shall increase the Developer Fee limit by the dollar value of the capital contribution shall increase the Developer Fee limit by the dollar value of the capital contribution.
- (e) The limits set forth in this section shall apply ~~only~~ to each Project pursuant to the terms of a program Standard Agreement, as memorialized in Department loan or grant documents entered into pursuant thereto (the “Original Award”). For any future work performed for the benefit of the Project, to the extent such work was not captured, set forth, or otherwise contemplated in any of ~~the~~ legal documents memorializing terms related to the Original Award, the fees for such new developer work benefiting the Project shall be recalculated in accordance with this section, treating that new work as if it were a separate project.
- (f) For projects where less than 25 percent of total units are counted in the determination of maximum Department loan or grant amounts, the Department may defer to the limits on ~~d~~Developer ~~f~~Fees applicable to other public agency project -funding sources, -to the extent it deems necessary to attract sufficient applications to utilize available Department funding.

NOTE: Authority cited: Sections 50406(n)~~§~~, 50517.5(a)(1), 50517.5(a)(3)~~§~~, 50675.1(~~ed~~)~~§~~, 50675.11~~§~~, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2)~~§~~, 50675.5(b)(5)~~§~~, 50675.8(a)(5)~~§~~ and 50896.1(a), Health and Safety Code.

Amend Adopt § 8313. Reserved, as follows:

Section 8313. Reserved ~~Miscellaneous~~ Program Compatibility.

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

Adopt § 8313.1 Funding Source Surpluses as follows:

- ~~(b)~~(a) If, upon completion of construction, permanent development funding sources exceed actual total development costs are less than those approved by the Department at construction loan closing, the following requirements apply to the resulting funding surplus:
- (1) If there are local- public agency lenders providing construction- period financing, and the Department is providing only permanent financing, the local lenders may reduce their loans by an amount not exceeding the- contingency shown in- the loan documents approved by the Department at construction loan closing.
- (2) In other- cases, or to the extent that the surplus exceeds the budgeted contingency, and to the extent allowed under TCAC regulations- the Department loan amount shall be reduced by an amount not less than the difference between projected and actual costs the surplus multiplied by the ratio of the Department's loan amount to the total amount of public agency loans with required payments that do not exceed 0.42% per year total local government assistance, as defined in 8315(c)(3). If a reduction would conflict with TCAC or CDLAC regulations, the funds that would have been applied towards this reduction in the absence of such conflict shall be used to reduce tenant rents or for other tenant benefits, as approved by the Department.

- (3) As an alternative to (1) or (2), the Department- may approve use of surplus funds to reduce tenant rents or for other direct- tenant benefits.
- (c) The Department may permit the ultimate borrower or recipient of Department funds to be a special purpose entity formed and controlled by the Sponsor if and only if the Sponsor can demonstrate to the satisfaction of the Department all the following criteria:
- (1) The Sponsor will remain as equally liable to the Department as the special purpose entity with respect to the specific performance of the obligations of the loan or grant documents. **The Sponsor may be as equally liable to the Department as the special purpose entity with respect to the financial obligations of the loan or grant documents;**
- (2) =The Sponsor shall not intentionally or in effect limit or abrogate its legal liability to the Department by utilizing the special purpose entity; and
- (3) =There shall be no more than two corporate entities between the Sponsor and the special purpose entity in the corporate control and organizational structure(s). For the purposes of this ~~item~~ **subdivision**, “corporate entity” may include a corporation, limited liability company, business trust, limited partnership, or general partnership. For the purposes of determining “control,” the **Sponsor must provide, at the very minimum, evidence satisfactory to the Department that the Sponsor (or Sponsors) through direct control of the corporate entities between the Sponsor and the special purpose entity, performs the substantial management duties on behalf of the special purpose entity that involves:**
- (a) **renting, maintaining and repairing the low-income housing property (or if these duties are delegated to an agent, hiring and overseeing the agent’s duties);**
- (b) **acquiring, holding, assigning or disposing of property or any interest in property;**
- (c) **borrowing money on behalf of the special purpose entity, encumbering the special purpose entity’s assets, placing title in the name of a nominee to obtain financing, preparing items in whole or in part, in connection to refinancing, increasing, modifying or extending any obligation; and**
- (d) **determining the amount and timing of distributions to partners and establishing and maintaining all required reserves.**

~~**Department shall utilize the standards promulgated by the State Franchise Tax Board.**~~

NOTE: Authority cited: Sections 50406(n), 50517.5(a)(1), 50517.5(a)(3), 50675.1(ed), 50675.11, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2), 50675.5(b)(5), 50675.8(a)(5), and 50896.1(a), Health and Safety Code.

Amend § 8314. Use of Operating Cash Flow, as follows:

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

(1) First, towards payment of any:

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

(B) ~~Asset~~ management, partnership management and similar fees, to the extent such fees are specified under the terms of financing from a local public entity and reasonable in comparison to fees paid in other similar developments in the Department's portfolio. Where there is no standard specified under local public entity financing, or there is no local public entity financing, the Department shall allow the payment of asset management fees in an amount not to exceed ~~\$12,000~~\$30,000 per year for 2016 through 2020. ~~This limit shall be increased every five years in accordance with changes in the CPI for the five-year period ending one year prior to the effective date of the increase. For example, the limit for 2021 through 2025 shall be \$30,000 multiplied by the percentage change in the CPI from January 1, 2016 to December 31, 2020, including fees paid to investors, in an amount not to exceed the sum of:~~

~~(1)~~1. An amount for the current year, equal to \$30,000 for 2016 and increased at the rate of 2.5% 3.5% for each subsequent year, plus

~~(2)~~2. Unpaid asset management, partnership management, and similar fees may accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and

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

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

(A) If the terms of other public agencies' financing also require payments from remaining cash flow, the Department may agree to share what would otherwise be its 50 percent share of available cash flow with the public agencies in amounts proportional to the agencies' respective ~~loan amounts (or, if a public agency has either donated land to the Project, or is providing the land through a ground or air rights lease, the Department loan amount and the total local government assistance, as defined in Section 8315 of these regulations).~~ ~~If a public agency loan requires mandatory payments (beyond payments from remaining cash flow) exceeding 0.42 percent per annum, the Department shall discount the amount of the public agency loan to reflect its net present value over the term of the loan, net of the required payments.~~ assistance amounts (total local government assistance, as defined in Section 8315, and total Department loans and grants).

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

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

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

Distributions shall not reduce the otherwise permitted Distribution in those subsequent years.

- (c) ~~Unpaid asset management, partnership management and similar fees may accrue for a period not to exceed three project fiscal years following the year during which they are earned. Payment of these accrued fees shall not reduce otherwise permitted payments. Payment of Distributions, deferred Developer Fee, asset management fees, partnership management and similar fees shall be permitted only after the Sponsor submits a complete annual report and operating budget, and the Department determines that the report and budget demonstrate compliance with all Program requirements for the applicable year. Circumstances under which no Distributions, deferred Developer Fee, asset management fees or partnership management and similar fees shall be paid include:~~

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

~~(2) when the Department determines that the Sponsor has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation of the Rental Housing Development or use of Project income;~~

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

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

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

- (d) Distributions attributed to income from Commercial Space and non-Restricted Units shall not be subject to limits pursuant to this section. Payment of Distributions, deferred Developer Fee, asset management fees, partnership management fees and similar fees shall be permitted only after the Sponsor submits a complete annual report and operating budget, and the Department determines that the report and budget demonstrate compliance with all Program requirements for the applicable year. Circumstances under which no Distributions, deferred Developer Fee, asset management fees, or partnership management fees, and similar fees shall be paid include:

- (1) when written notice of default has been issued by any entity with an equitable or beneficial interest in the Project;
 - (2) when the Department determines that the Sponsor has failed to comply with the Department's written notice of any reasonable requirement for proper maintenance or operation of the Rental Housing Development or use of Project income;
 - (3) if all currently required debt service, including mandatory payments on the Program loan, and Operating Expenses have not been paid;
 - (4) if the replacement reserve account, operating reserve account, or any other reserve accounts are not fully funded pursuant to Sections 8308 and 8309 and the Regulatory Agreement.
- (e) For 2017~~6~~, the following limits shall apply to ~~costs~~-total Supportive Services Costs paid as- Operating Expenses ~~for supportive services that the Sponsor is obligated to provide under their TCAC regulatory agreement, case management and supportive service coordination.~~ These limits shall be increased each year after 2017~~6~~ at the rate of 2.5 percent per year:
- (1) \$4,080 per unit per year for supportive housing restricted to individuals or families experiencing chronic homelessness, as defined consistent with Health and Safety Code Section 50675.14;
 - (2) \$3,060 per unit per year
 - (A) for supportive housing that is not restricted to individuals or families experiencing chronic homelessness as defined pursuant to- Health and Safety Code Section 50675.14~~;~~ and
 - (B) for units restricted to occupancy by ~~S~~pecial Needs Populations under any Department programs (“Special Needs Population” has the same meaning as defined section 7301(s));
 - (3) \$1,051 per unit per year for other units ~~restricted to households with incomes not exceeding 30 percent of area median income; and under where the Sponsor, their affiliate, or a service provider under contract to provide~~ **substantial Supportive S**ervices at the Project has both:
 - (A) -qualified staff- devoted exclusively to oversight and quality control of resident services in affordable housing, including the Project; and

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

(4) ~~\$765 per unit per year for all other units~~\$250 per unit per year for other units, where the Sponsor, ~~or~~ their affiliate, **or a service provider under contract**, does not satisfy the requirements set forth in subdivision (e)(3).

~~These maximum amounts shall be increased each year after 2016 at the rate of two percent per year.~~

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

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

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

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

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

~~(g) Resident service coordination and case management costs include the costs of providing tenants with information on and referral to social health, educational, income support and employment services and benefits, coordination of community building and educational activities, and individualized needs assessment and individualized assistance with obtaining services and benefits. They may include salaries, benefits, contracted services, telecommunication expenses, travel costs, supplies, office expenses, staff training, maintenance of on-site equipment used in services programs, such as computer labs, incidental costs related to resident events, and other similar costs approved by the Department.~~

NOTE: Authority cited: Sections 50406(n)~~†~~, 50517.5(a)(1), 50517.5(a)(3)~~†~~, 50675.1(~~ed~~)~~†~~, 50675.11~~†~~, 50896.1(a) and 50896.3(b), Health and Safety Code. Reference: Sections 50517.5(a)(1), 50517.5(c)(2), 50517.5(e)(2)~~†~~, 50675.8(a)(5)~~†~~, 50896.1(a), Health and Safety Code.

Amend § 8315. Subordination Policy, as follows:

- (a) The Department may execute and cause to be recorded a subordination agreement subordinating the Department's lien so long as the subordination does not increase the Department's risk beyond that contemplated in the Program loan or grant commitment, as may be amended from time to time, and so long as the subordination would further the interest of the Program. However, and except for Projects assisted by the U.S. Department of Housing and Urban Development under the Section 811 or Section 202 programs, the Department shall not enter into a subordination agreement or other agreement that contains any of the following:
- (1) Any limitation of, or condition on, the Department's exercise of its remedies including, but not limited to issuing a notice of default based on a breach under the Department's loan documents, including a default based solely on a breach of the senior lienholder's documents.
 - (2) An agreement that the senior lienholder's acceptance of a deed in lieu of foreclosure would result in the senior lienholder taking title to the Rental Housing Development free and clear of the Department's lien(s).
 - (3) An agreement permitting any modification or supplement of the senior lienholder's lien without the prior written consent of the Department except an agreement that permits a senior lienholder to make advances to: (i) cure a default under a lien with a higher priority than the Department's lien; (ii) pay delinquent taxes on the security property; (iii) pay delinquent hazard or liability insurance premiums for the security property; or (iv) to protect the health and safety of the tenants.
 - (4) An agreement that would require the Department to undertake additional obligations to any party.
- (b) The Department's lien(s) shall not be subordinated to the liens of a local governmental entity unless either:
- (1) the total local governmental assistance to the Project is more than twice the amount of the Department's total assistance to the Project (including both loans and grants); or
 - (2) the total local governmental assistance to the Project is more than the Department's total assistance to the Project (including both loans and grants) and the local government entity manages- a portfolio of their own loans that includes over 10,000 rental units with rent and

occupancy restrictions.

(c) As used in this section:

- (1) “Department's lien” means a deed of trust, regulatory agreement, or other agreement securing payment or performance under an award of Program funds that has been recorded in the office of the recorder of the county in which the Rental Housing Development is located.
- (2) “Lien of a local government entity” means a recorded deed of trust, regulatory agreement, reversion, or other recorded agreement securing payment or performance, or a covenant running with the land that affects the maintenance, use, operation, or occupancy of the Rental Housing Development. Except that covenants in favor of a community redevelopment agency or successor agency regarding the use, maintenance, operation, or transferability of a Rental Housing Development including rent limitations or income restrictions on tenants, or prohibiting discrimination, shall not constitute liens subject to the requirements of this section.
- (3) “Total local government assistance” means the sum of the original principal amounts of loans and grants made by the local government entity plus other direct project costs paid for by the local governmental entity and approved by the Department including, but not limited to, costs of site preparation, demolition, environmental remediation, and land acquisition. The value of assistance in the form of land write-downs or donations shall be limited to the cost paid by the public agency to acquire the land, less any sales proceeds paid to the agency; or in the case of a leasehold, the cost paid by the public agency less the present value of projected lease payments. ~~If a public agency loan requires mandatory payments (beyond payments from remaining cash flow) exceeding 0.42 percent per annum, the Department shall discount the amount of the public agency loan to reflect its net present value over the term of the loan, net of the required payments.~~

~~(d) The Department's lien(s) shall not be subordinated to the liens of a lender affiliated with an entity that has an ownership interest in the Project unless the lender has both:~~

- ~~(1) a Community Reinvestment Act rating of “Outstanding,” or has a rating of “Satisfactory” instead of “Outstanding” based on factors unrelated to their performance as a housing lender in California; and~~
- ~~(2) a Standard and Poor’s rating of “A-” or higher. a covenant, regulatory agreement, or similar instrument is recorded senior to the lender’s~~

documents that includes the provisions specified in section 8310(f)(2).

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

Amend § 8316. Leasehold Security, as follows:

- (a) In any Project where the Sponsor proposes to control the Project land through a long-term ground lease, either:
 - (1) the Regulatory Agreement and other Program documents shall be recorded against both the Sponsor's interest in the Project and the fee interest in the land, and the lease shall have a term remaining at the time of recordation at least equal to the term of the Program loan or grant; or
 - (2) if the Regulatory agreement and other Program documents are not recorded against the Project's fee interest, the ground lease shall be subject to the Department's approval, must not be subject to any other mortgages, regulatory agreements, use restrictions, or equivalent instruments on the fee interest, and shall contain, or be amended to contain, provisions which:
 - (A) establish a remaining term of at least ninety (90) years from the date the Department documents are recorded, provided that the Department may accept a lesser term, not less than 65 years, when the lessor is a public agency;
 - (B) ensure the validity of the lien of the Program loan and/or grant documents on the lease;
 - (C) ensure that the lease permits the Project to satisfy all Program requirements and permit the Department to enforce the provisions of the Program loan and/or grant without restriction;
 - (D) expressly consent to the lessee's assignment of the lease to the Department without further consent of the lessor, and permit the Department, after acquisition of the leasehold property, to transfer or assign the lease to a third party without consent of the lessor.

- (E) provide that the lessor does not have the right to terminate the lease or accelerate the rent upon lessee's breach without first giving the lessee and the Department reasonable notice and opportunity to cure within a reasonable period;
- (F) provide that no termination, modification or amendment to any terms of the lease shall be effective without the written consent of the Department, and any attempt to take such actions would be void without the Department's consent;
- (G) require that, in the event of destruction of any improvements on the land, neither the lessor nor the lessee shall terminate the lease if and so long as the lessee or Department pursues reconstruction of the improvements with reasonable diligence;
- (H) provide that the Department shall not have any liability for the performance of any of the obligations of lessee under the lease until the Department has acquired the leasehold interest, and then only in accordance with the terms of the lease and only with respect to obligations that accrue during the Department's ownership of the leasehold interest;
- (I) provide that neither the lessor nor the lessee, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the lease or otherwise render it unenforceable in accordance with its terms;
- (J) provide that the leasehold interest will not merge into the fee in the event that the lessee acquires the reversionary interest in the Project; and
- (K) provide that acquisition of the leasehold property by the Department will not result in a termination of the leasehold; and upon such event, obligate the lessor to enter into a new lease having a term at least as long as the term remaining on the lease prior to acquisition by the Department and on substantially the same terms and conditions.

(b) If any other regulatory agreement, use restriction, or equivalent instrument is recorded against the fee, the Department's ~~R~~Regulatory ~~A~~Agreement or covenant must also be recorded against the fee. This subsection shall not apply ~~however~~ if the total local governmental assistance to the Project is more than the Department's total assistance to the Project (including both loans and grants) and the local government entity manages a portfolio of their own loans that includes over 10,000 rental units with rent and occupancy restrictions. For the purposes of this

subsection, the phrase “regulatory agreement, use restriction, or equivalent instrument” shall not be interpreted to include either any instrument that does not relate in any way to affordability, or any affordability restriction that is not required as a condition of public financing.

- (bc) Where the lessee and lessor are related or affiliated parties, the Program loan and/or grant documents shall be recorded against both the Sponsor’s interest in the Project and the fee interest in the land.
- (ed) To the extent consistent with the statutes and regulations ~~or guidelines~~ governing the Program, the Department may modify or waive the requirements of subparagraph (a)(2) where the lessor is a public agency that demonstrates that it is prohibited by law from meeting the requirements, or where the Project will be located on Native American Lands and there is a legal prohibition on meeting these requirements, and the Department determines that there remains adequate security for the Program loan.

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

Add new § 8317. Transaction Fees, as follows:

- (a) To cover the Department’s costs of processing **any specific Restructuring Transactions as defined in this section**, the Department shall charge **as authorized by, to the extent allowed by statute, subdivisions (f) and (n) of section 50406 of the Health and Safety Code fees to cover the administrative costs incurred for the Department’s staff to negotiate and prepare the legal documents necessary to accomplish the subject Restructuring Transaction, in the same amount as authorized for Restructuring activities as set forth in Health and Safety Code Sections 50561.**
- (b) For the purposes of this section, the term “Restructuring **Transaction**” means one or more of the following:
 - (1) extension of the Department’s loan term (or terms, if there are multiple Department loans),
 - (2) change of ownership (excluding transfer of ownership between two entities controlled by the same parent entity),
 - (3) a new subordination of the Department’s loan or loans to a ~~new~~ senior loan or

loans, and/or investment of tax credit equity investment.

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

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

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

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

(f) The legal documents necessary to accomplish the subject Restructuring Transaction shall be subject to the provisions set forth in this subchapter. ~~The date of Restructuring shall be considered to be the date of recording of the documents implementing such Restructuring.~~

NOTE: Authority cited: Sections 50406(n) and ~~50406.7~~, Health and Safety Code.
Reference: Sections ~~50406.560, and 50561~~ of the Health and Safety Code. ~~§~~

Add new § 8318. Federal Loan Extensions, as follows:

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

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