



August 6, 2021

California Department of Housing and Community Development
Jennifer Seeger, Deputy Director of Financial Assistance
2020 West El Camino Ave.
Sacramento, CA 95833

Re: Comment on Multifamily Housing Program Draft Guidelines

Dear Ms. Seeger:

The California Housing Consortium (CHC) is a non-partisan advocate for the production and preservation of housing affordable to low- and moderate-income Californians. CHC's diverse membership that spans the development, building, financial, and public sectors makes us uniquely situated to provide a broad, united position that reflects the majority of the affordable housing community.

Thank you for the opportunity to provide comments on the Draft Guidelines for the Multifamily Housing Program (MHP). We appreciate the effort made by the Department to quickly release regulation updates and NOFAs for the program and to begin implementation of AB 434.

Unfortunately, we are concerned that these draft Guidelines are overly prescriptive in the type of project that will be funded. With MHP serving as the standard ranking criteria for all AB 434 programs, it is even more important that this program produce critically needed affordable housing in all opportunity areas across a variety housing needs. It's unclear how this scoring system will work with the other AB 434 housing programs.

A specific state policy priority, like PSH, AFFH or BIPOC projects, should be actualized through the tie breaker or a setaside. It is inappropriate in this highly competitive environment and the wide range of housing needs for a specific type of project be an automatic winner.

Section 7301 Definitions:

(g) and (h) BIPOC and BIPOC Project. Because these definitions are still being further refined at CDLAC, we recommend that the MHP Guidelines instead cross-reference Section 5170 of the CDLAC Regulations, instead of restating the definitions as currently written. This will provide flexibility if the definitions are amended in the CDLAC Regulations after the adoption of the

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America

MHP Guidelines.

(ff) Principal. HCD should use TCAC's definition: *an individual overseeing the day-to-day operations of affordable rental projects as senior management personnel of the Sponsor or property management company.*

(nn) Restricted Unit. HCD should reformulate this definition to include 70% and 80% Low-Income Housing Tax Credit (LIHTC) units, unless otherwise prohibited by law. As a general policy, HCD should assist in the funding of any tax credit unit, especially given that 70% and 80% units must be offset by more deeply targeted units to meet the LIHTC 60% average AMI test. While Proposition 1 limits MHP funding to 60% AMI units, the underlying MHP statute does not. To the extent MHP receives future funds beyond Proposition 1, the guidelines should proactively allow this expansion.

Section 7302 Eligible Project

(d) [stricken]. We support allowing MHP developments to seek 9% tax credits. We recommend that HCD further clarify that an applicant that receives an MHP award may convert to 9% tax credits, subject to the lower MHP loan limits.

(d)(2) Special Needs. The Special Needs project type requirement should remain at 25% of the units, not increased to 45%. This allows for better integration of Special Needs populations into projects. Additionally, the lead service provider should only need 2 years' experience, consistent with TCAC requirements.

(d)(3) Senior. HCD should be consistent with the TCAC and allow all senior housing, including non-special needs new construction, to serve persons 55 years or older, as allowed by state and federal fair housing laws.

(d)(6) Grandfathering. HCD should utilize CDLAC's grandfathering rule so that a developer who obtained all land use approvals prior to January 1, 2022 may utilize prior project type definitions.

(e)(5) Special Needs Referrals. Consistent with Section 10315(b)(4) of the TCAC regulations, HCD should allow developers to also use county health, or behavioral health referral systems, depending on what is available. Acuity should be measured using VI-SPIDAT *or its equivalent*.

(h) Multiple Department Funding Sources. We appreciate and support the elimination of the anti-stacking rule.

(i) Assisted Unit Requirements. HCD should only regulate Assisted Units to the extent allowed by Article 34. It is inefficient and duplicative for HCD to monitor units it does not fund.

Section 7303 Eligible Sponsor:

(c) and (d) Sponsor Experience and Capacity. HCD should eliminate these subsections because they are vague, subjective, and unnecessary since Sponsor experience is already covered in Section 7320(e).

Section 7305 Cost Limitations:

(b)(4) [stricken]. We appreciate and support the alignment of MHP developer fee limits with those of TCAC.

Section 7306 Type and Term of Loan:

(a) Type of Loans. HCD has publicly stated its intent to make loan funds available during the construction period to save on interest expense, and it is very possible the Legislature will enact AB 1423 this year to

facilitate this policy shift. To facilitate implementation, HCD should amend this subdivision now to permit construction lending subject to guidelines to be developed by the department.

Section 7307 Maximum Loan Amounts:

(b)(5) Consistent with our comment in 7302(d), projects should be allowed to choose the tax credit path that is most likely to succeed. Applicants receiving an MHP award who apply under a 4% financing structure should also be pre-approved for a lower loan amount using the 9% loan limits. Having this pre-approved would allow applicants to more nimbly position their projects to obtain tax credits in a constantly changing environment.

(c) Inclusionary Projects. We do not support the elimination of this subsection and we seek a modification to the existing language. “For a Project required to be constructed as a condition of approval of one or more market rate developments pursuant to an inclusionary housing ordinance, or similar local requirement, units required under the ordinance or other requirement shall not be counted in determining applicable loan limits, *except for units developed under a land dedication to the local government agency in which the project is located. For units being developed pursuant to a land disposition under the California Surplus Land Act, projects applying under this exception must be on land sold or leased under terms that meet the definition of “Public Funds” as defined in Section 10325(c)(9)(A)(i) of the TCAC Regulations.*”

Section 7308 Interest Rate and Loan Repayment:

(c) Given that HCD’s monitoring costs relate to unit count and not to loan size, HCD should cap the required interest payments at \$150 per unit per year. For a project receiving the maximum \$20 million loan, an \$84,000 *annual* monitoring fee is excessive and not reflective of HCD’s actual costs. A project of identical size with a \$10 million MHP loan would pay only \$42,000 in annual interest to cover identical HCD monitoring costs.

Section 7312 Rent Standards:

(f)(2). HCD should eliminate the transition reserve requirement. This will free up millions of program dollars that can be deployed to produce more affordable units and removes the possibility of LIHTC investors capturing these tempting targets when they exit the ownership entity after 15 years. Given the extremely low risk level of federal rental assistance terminating, it is unnecessary to establish a department-wide reserve. In any event, the department should not wait to eliminate the project-level reserve requirement until a department-wide reserve is in place.

(f)(3)(D). We are opposed to allowing HCD to reimpose rent or occupancy restrictions because this would lead to further displacement of existing tenants.

Section 7314 State and Federal Laws, Rules, Guidelines and Regulations:

Compliance with these laws is already required and monitored by other agencies. Restating these requirements is unnecessary, potentially confusing, and will require additional expense to provide certifications. We recommend you eliminate this section altogether and utilize the agencies who already have this authority and expertise.

Section 7316 Construction Requirements:

Instead of these criteria, HCD should cross-reference the objective, specific minimum constructions standards of Section 10325(f)(7) of the TCAC regulations.

Section 7317 Application Process:

(b) and (c) Concurrent Applications. We are opposed to subdivisions (b) and (c). We look forward to a true one stop shop and super NOFA for all state financing sources, which would solve the problem of developers submitting concurrent applications and substituting or increasing funds. The fractured and uncoordinated nature of the current state financing system is the reason that developers must submit concurrent applications to separate programs and frequently change funding strategies.

Section 7318 Application Content and Application Eligibility Requirements:

(b)(5) Applicants should be given notice and the opportunity to correct non-material deficiencies in their applications, as currently allowed by CDLAC.

Section 7319 Threshold Requirements:

(g) Amenities. The language of (g) and (g)(1) are especially vague, overly broad, and unnecessary given the site amenity point scoring category in Section 7320(e)(2). HCD should eliminate these and keep only (g)(2).

Section 7320 Scoring:

(b) Addressing Local Housing Needs. We have significant concerns with the proposed changes to this scoring category. While we support incentivizing developments in high opportunity areas, this proposal makes high opportunity projects automatic winners. The additional 5 points in this category plus the additional 5 points in subsection (e) (additional comment on that below) would also allow high opportunity projects to drastically reduce other critical public benefits, such as depth of affordability. Additionally, only developments in lower-opportunity areas are effectively required to reserve units for persons experiencing chronic homelessness or special needs populations, which raises significant fair housing issues. HCD should use tiebreaker incentives to give some competitive advantage to higher opportunity area projects and to prioritize the inclusion of special needs or supportive housing (additional comment on that below).

HCD should make Local Housing Needs a five-point maximum scoring category with points limited to those described in paragraph (5) and use CDLAC's definition of new construction for the purposes of awarding points for (b)(5)(A). This would include reconstruction projects that increase the unit count by 25 units or 50% of the existing units, whichever is greater, and adaptive reuse projects.

(c) Development and Ownership Experience of the Project Sponsor. HCD should utilize CDLAC's experience point criteria which refer to the TCAC scoring criteria but also allow alternative pathways for emerging BIPOC developers. The development community is already familiar with this criteria and it provides much more flexibility for lower-volume and emerging developers. While we are supportive of giving emerging BIPOC developers an alternative pathway to maximum points, we continue to be concerned about the policy of creating exclusive points that will be determinative of award outcomes. To ensure that BIPOC developers receive a fair number of awards, HCD should create a BIPOC setaside or, like with tribal projects, guarantee a minimum number of awards to BIPOC developers.

(d) Project Readiness. Readiness points should focus primarily on land use approvals and commitment of soft funds, including rental assistance, and HCD should clarify that a development approved under a nondiscretionary process receives three-points under subparagraph (A).

Paragraphs (1), (2), and (6) should be eliminated, as enforceable financing commitments for construction financing are not a good indicator of readiness, CEQA clearance is part of the entitlement process covered by

paragraph (3), NEPA clearance relates to the release of funds and does not affect a project's ability to proceed to construction, and hybrid projects share the same uncertain LIHTC funding path as any other project.

(e) Adaptive Reuse / Infill / Proximity to Amenities/ Sustainable Building Methods. HCD should keep this category at 15 points maximum for all projects. While we support incentivizing developments in high opportunity areas, this proposal makes high opportunity projects automatic winners. The additional 5 points in this category plus the additional 5 points in subsection (b) would also allow high opportunity projects to drastically reduce other critical public benefits, such as depth of affordability. HCD should instead use tiebreaker incentives to give some competitive advantage to higher opportunity area projects.

(f) Cost Containment. HCD should be consistent with and utilize the CDLAC point criteria, which stakeholders have spent significant time refining. The threshold basis limits on which the proposed calculation is based are inexact and would lead to troubling geographic inequities.

(g) Exceeding Accessibility Requirements. Given that all MHP projects seek tax credits and TCAC requires 15% mobility accessible units, it is not clear what value this category adds. HCD should simply require compliance with TCAC minimum construction standards, which address accessibility, as a threshold requirement in Section 7316.

(h) Performance Penalties. HCD should seek stakeholder input on, publish, and implement its standards and process for imposing negative points, including a meaningful appeal process, before incorporating them into these guidelines. Once adopted, it would be best to state the standards and process in these guidelines rather than refer to a separate document.

(i) Tiebreaker. We continue to have concerns with the MHP tiebreaker and offer the following suggestions for simplifying it and creating better policy outcomes and more financially stable developments:

- Average affordability of all residential units: Project receives up to 1 point based on average affordability of all residential units, ranging from 30-60% AMI, i.e. a project with 30% average AMI would receive 1 point and a project with 45% average AMI would receive 0.5 point. Capping the average affordability helps ensure financial feasibility and allows projects without significant rental assistance to still be competitive.
- Leverage of other funds: We recommend that projects receive a fraction of a point based on the ratio of non-HCD funds/Total Development Costs. This would benefit projects leveraging additional sources of funding without significantly disadvantaging smaller jurisdictions without local resources.
- Addressing Homeless: We recommend that projects including at least 20% of units restricted to persons experiencing homeless or families at risk of homelessness receive 1 point and those with at least 10% receive 0.5 point. These units must already have secured a commitment of rental or operating subsidy. This would incentivize all project types to include some units to help reduce homelessness, but not be duplicative of the affordability score nor drive all projects into being 100% PSH projects.

Finally, similar to TCAC, HCD should add a multiplier for AFFH projects, like 1.25. This multiplier should be used only to the extent necessary to ensure that 40% of MHP funds are used in higher and high resource areas. Additionally, for these projects, HCD should utilize TCAC's 7-year grandfathering rule so that a developer who gains control of a property under a particular opportunity map designation is not penalized if the maps change at a later date.

Section 7321 Performance Deadlines:

A general 24-month deadline to secure all project financing is reasonable, but HCD should allow an extension up to one year for any reason beyond the control of the developer, specifically including failure to obtain a TCAC or CDLAC award. In this highly competitive environment for tax credits and bonds, projects often have to apply in several successive rounds through no fault of their own.

Section 7323 Sales, Transfers, Encumbrances, and Loan Payoff:

(e) Refinancing. HCD should allow refinancing or additional debt in order to deploy equity into HCD-approved affordable housing opportunities, including new projects or the rehabilitation of existing developments, provided that such debt is subordinate to HCD's lien and the project remains feasible. Such a policy would unlock millions of dollars to increase the stock of desperately needed affordable homes. Further, HCD's current prohibition of cash payments to the Sponsor, repayment of general partner loans or of limited partner loans, or for limited partner buyouts is bad policy and could lead to a loss of long-term affordability. If developers cannot raise money at year 15 to buy out the investor, they risk losing the property through sale, possibly to an owner who is less inclined to preserve long-term affordability.

Thank you for your consideration. We would be happy to discuss these comments with you in more detail.

Sincerely,

A handwritten signature in black ink that reads "Ray Pearl". The signature is written in a cursive, flowing style.

Ray Pearl
Executive Director