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Permanent Local Housing Allocation Final Guidelines



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State of California**

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The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

Quasi-legislative regulations ... have the dignity of statutes ... [and]... delegation of legislative authority includes the power to elaborate the meaning of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999)

In consultation with stakeholders, the California Department of Housing and Community Development (Department) may adopt Guidelines to implement this Section, including determining allocation methodologies. Any guideline, rule, policy, or standard of general application employed by the Department in implementing this chapter shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Title 2 Government Code, Part 1 of Division 3).

NOTE: Authority Cited: Health and Safety Code Section 50470, subdivision (d).

The Department reserves the right, at its sole discretion, to suspend or amend the provisions of these Guidelines, including, but not limited to, grant award amounts.

INTRODUCTION

Chapter 364, Statutes of 2017 (SB 2, Atkins) was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it establishes a permanent source of funding intended to increase the affordable housing stock in California. The revenue from SB 2 will vary from year to year, as revenue is dependent on real estate transactions with fluctuating activity. The legislation directs the California Department of Housing and Community Development (Department) to use 70 percent of the revenue collected, beginning in calendar year 2019, to provide financial assistance to local governments for eligible housing-related projects and programs to assist in addressing the unmet housing needs of their local communities. This program is hereafter referred to as the Permanent Local Housing Allocation (PLHA) program.

Guidelines for the PLHA program are organized into five Articles as follows:

Article I. General provisions: This article includes information on the purpose of the Guidelines, program objectives, and definitions used throughout the document.

Article II. Program funding: This article describes allocation formulas and methodologies, and award amounts.

Article III. Formula allocation component: This article describes the requirements for Applicants to apply for funds under the formula allocation of the PLHA program.

Article IV. Competitive allocation component: This article describes requirements and uses for PLHA competitive allocation funds.

Article V. Administration: This article describes administrative functions such as terms, non-performance remedies, and reporting and monitoring requirements.

Permanent Local Housing Allocation (PLHA) Program: 2019 Guidelines

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ARTICLE I. GENERAL PROVISIONS

Section 100. Purpose and Scope

- (a) These Guidelines (hereinafter “Guidelines”) implement, interpret, and make specific Chapter 364, Statutes of 2017 (SB 2, Atkins - hereinafter “SB 2”) as authorized by Health and Safety Code (HSC) Section 50470, which created the Building Homes and Jobs Trust Fund and the PLHA program. The principal goal of this program is to make funding available to eligible local governments in California for housing-related projects and programs that assist in addressing the unmet housing needs of their local communities. Twenty percent of the funding in the Building Homes and Jobs Trust Fund is required to be expended for Affordable Owner-Occupied Workforce Housing, and the program prioritizes investments that increase the supply of housing to households that are at or below 60 percent of the Area Median Income (AMI), adjusted for household size.
- (b) These Guidelines establish terms, conditions, and procedures for local governments to submit applications to the Department for funds from the PLHA program’s three components, as listed below:
 - (1) Entitlement formula component per HSC 50470(b)(2)(B)(i)(I)
 - (2) Non-entitlement formula component per HSC 50470(b)(2)(B)(i)(II)
 - (3) Non-entitlement competitive grant program component per HSC 50470(b)(2)(B)(i)(I) (eligible Applicants are the same as for component 2 above)
- (c) The non-entitlement competitive grant program component prioritizes assistance to persons experiencing or At risk of homelessness.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(A), subdivision (b)(2)(B)(i) and subdivision (b)(2)(B)(ii)(I-V).

Section 101. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meanings of terms described in HSC Section 50470.

- (a) “Accessory dwelling unit” (ADU) means a dwelling unit which is attached, detached or located within the living area of the existing dwelling or residential dwelling unit and which provides complete independent living facilities for one or more persons pursuant to Government Code (GC) Section 65852.2 and 65852.22. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling. An Accessory dwelling unit also includes the following: an efficiency unit, as defined in Section 17958.1 of the HSC, or a manufactured home, as

defined in Section 18007 of the HSC.

- (b) "Activity" means any single eligible undertaking carried out as part of an Applicant's allocation(s) under the Program.
- (c) "Affordable" means a housing unit that satisfies at least one of the following criteria:
1. If the unit is being rented to low-income, Very low-income or Extremely low-income households, it complies with the Multifamily Housing Program guidelines Section 7312 and the Section 7301 definition of "Affordable Rent"; or
 2. If the unit is being sold, it is offered at an "Affordable housing cost", as published in the Fannie Mae Selling Guide, Part B, Debt to Income Ratios, as updated annually (<https://www.fanniemae.com/content/guide/selling/b3/6/02.html#DTI.20Ratios>), and it complies with the income limits stated in the definitions of Moderate-Income and Lower-Income in this section; or
 3. If the unit is being rented to Moderate-Income households, it is available at a gross rent, including a utility allowance, that does not exceed 30 percent of the applicable income eligibility level, and complies with the definition of Moderate-Income in these guidelines
- (d) "Affordable Owner-Occupied Workforce Housing" (AOWH) means owner-occupied housing per HSC Section 50092.1 that is affordable to persons and families of low or moderate income, as that term is defined in HSC Section 50093, except in High-cost areas where Moderate-income shall include households earning up to 150 percent of AMI.
- (e) "Annual Progress Report" (APR) means the Housing Element APR required by GC Section 65400 on the prior year's activities and due to the Department April 1 of each year.
- (f) "Annual Report" means a form issued by the Department and completed by a Local government awarded PLHA funds on which the Local government documents the uses and expenditures of any allocated funds and outcomes achieved.
- (g) "Applicant" means an eligible Local government applying for the program to administer one or more eligible activities. Applicant also means a Local or Regional Housing Trust Fund delegated by an eligible Local government to apply for the program and administer its allocation in accordance with all program rules.

- (h) “Area Median Income” or “AMI” means the most recent applicable county median family income published by the Department, available at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>
- (i) “At risk of homelessness” means the same as defined in Title 24 Section 578.3 of the Code of Federal Regulations and also includes any household receiving rental assistance funded by the California Emergency Solutions and Housing (CESH) program or the California Homeless Emergency Aid Program (HEAP).
- (j) “Capitalized Reserve for Services” means the reserve funded by the Local government pursuant to Section 301(a)(5) to address project supportive service budget deficits attributable to shortfalls in service funding sources.
- (k) “Comprehensive Housing Affordability Strategy” or “CHAS” means annual data compiled by the United States Census Bureau for the U.S. Department of Housing and Urban Development (HUD) to document the extent of housing problems and housing needs, particularly for low-income households.
- (l) “Community Development Block Grant” or “CDBG” means the program created pursuant to Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., as amended.
- (m) “Department” means the California Department of Housing and Community Development.
- (n) “Extremely Low Income” has the meaning set forth in HSC Section 50106, which is a maximum of 30 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.
- (o) “Fund” means the Building Homes and Jobs Trust Fund pursuant to HSC Section 50470.
- (p) “High-cost area” means those counties defined as high cost by the Federal Housing Finance Agency (at: <https://www.fhfa.gov/DataTools/>) and those counties for which HUD adjusted the Very low income and low-income rents due to high costs (at: https://www.huduser.gov/portal/pdrdatas_landing.html), as published by the Department in the annual PLHA Notice of Funding Availability.
- (q) “Local government” means any city, including a charter city, any county, including a charter county, or a city and county, including a charter city and county.

- (r) "Local Housing Trust Fund" or "Regional Housing Trust Fund" means a public, joint public and private fund or charitable nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code, which was established by legislation, ordinance, resolution (including nonprofit articles of incorporation), or a public-private partnership organized to receive specific revenue to address local or regional housing needs.
- (s) "Low or Lower Income" has the meaning set forth in HSC Section 50079.5, which is a maximum of 80 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.
- (t) "Moderate-Income" has the meaning set forth in HSC Section 50093, which is a maximum of 120 percent AMI, **or in High-cost areas, 150 percent of AMI**. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>. *This may be problematic if PLHA is actually used to fund "moderate" income units as definition is different from what is allowed by HE and RHNA.*
- (u) "Non-entitlement local government" means a Local government in an area which is not a metropolitan city or part of an urban county, a Local government that, as of September 1, 2017, was an incorporated city with a population of less than 50,000 or a county with an unincorporated area population of less than 200,000 persons which had not entered into a three-year Urban County Cooperation Agreement, or a Local government that was not otherwise entitled to receive CDBG funds directly from HUD.
- (v) "Operating subsidies" means payments to owners of affordable housing developments that make the housing more affordable by covering a portion of the ongoing costs of operating the development. Such payments would have the same effect as rental assistance.
- (w) "Owner-occupied" means a dwelling which is occupied by the owner and includes a single family dwelling or a dwelling unit in a stock cooperative, as defined by Business and Professions Code (BPC), Section 11003.2, a community apartment project, as defined by BPC Section 11004, or a condominium project, as defined by subdivision (c) of BPC Section 11004. 5.
- (x) "Plan" means the document submitted by the Applicant to the Department as part of a complete application in which the Applicant proposes to use allocated funds for at least one eligible Activity. The Plan shall have a term of five years. In succeeding years, the Local government is required to obtain the approval of the Department for any amendments made to the Plan, as set forth in Section 302(c)(5).
- (y) "Permanent Local Housing Allocation Program", "Program", or "PLHA" means the program developed to annually allocate 70 percent of the moneys deposited into the Fund pursuant to HSC Section 50470(b)(2)(B)(i).

(z) "Permanent supportive housing" has the same meaning as in HSC Section 50675.14, that is, housing with no limit on the length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing residents in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community. Permanent supportive housing may include associated facilities if used to provide services to housing residents. Permanent supportive housing does not include "health facility" as defined by HSC Section 1250 or any "alcoholism or drug abuse recovery or treatment facility" as defined by HSC Section 11834.02 or "Community care facility" as defined in HSC Section 1502, "Mental health rehabilitation centers" as defined in Section 5675 of the Welfare and Institutions Code (WIC), or other residential treatment programs.

(aa) "Regional Housing Needs Allocation" or "RHNA" means the share of the regional housing need represented by persons at all income levels within the area significantly affected by the general plan of the city or county allocated to an Applicant Local government pursuant to GC Section 65584(b).

(bb) "Sponsor" means the legal entity or combination of legal entities with continuing control of a 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 rental housing Project, unless the seller will retain control of the Project for the period necessary to ensure Project feasibility as determined by the Department.

(cc) "Very Low Income" has the meaning set forth in HSC Section 50105, which is a maximum of 50 percent of AMI. Grantees shall utilize income limits issued by the Department at the following link:
<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470.5 and 50470, subdivision (b)(2).

ARTICLE II. PROGRAM FUNDING

Section 200. Allocations

(a) SB 2 created a dedicated revenue source for affordable housing and directed the Department to make available 70 percent of the moneys in the Building Homes and Jobs Trust Fund, collected on and after January 1, 2019, to Local governments through the following allocations:

(1) Ninety percent of the moneys available shall be allocated based on the formula used under Federal law to allocate CDBG funds within California. This is the formula specified in Title 42 United States Code (USC), Section 5306.

(A) The amount of funds awarded to each Local government eligible for the entitlement formula component shall be determined by the 90 percent of PLHA funds available pursuant to this paragraph (1) and the percentage of funds received by the entitlement Local government in the CDBG federal fiscal year 2017 allocation process performed by HUD.

(B) Through the formula specified in paragraph (1), the percentage of funds allocated to Non-entitlement local governments shall be distributed to Non-entitlement local governments through a competitive grant program.

(2) Ten percent of the moneys available shall be allocated equitably among Non-entitlement local governments. The equitable allocation awarded to each Local government eligible for the Non-entitlement formula component shall be based on the sum of: (1) 50 percent of the funding available for the Non-entitlement formula component divided by the number of local governments eligible for the Non-entitlement formula component and (2) 50 percent of the funding allocated in proportion to each Non-entitlement local government's share of the total most severe housing need in California's Non-entitlement local governments, based upon the most recent HUD Comprehensive Housing Affordability Strategy.

(b) After funds are appropriated by the Legislature as part of the budget act, the Department will issue one or more Notices of Funding Availability (NOFA). Local governments shall submit an application under the NOFA pertaining to the specific allocation for which the Local government is eligible.

(c) It is recommended that Local governments that were urban counties in accordance with the distribution of funds pursuant to the formula specified in 42 USC, Section 5306 for the federal fiscal year 2017 provide a proportional share of their allocations to Local governments within their county with which they had a three-year Urban County Cooperation Agreement as of September 1, 2017, provided that these Local governments meet the threshold requirements of the PLHA and expend sub-allocated funds for eligible activities within the deadlines of the Standard Agreement governing the sub-allocation.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B).

Section 201. Award Amounts

(a) The formula allocation amounts derived pursuant to the formulas in Section 200 will be announced in the NOFA.

- (b) The maximum application amount and the minimum application amount for the competitive allocation will be stated in the NOFA.
- (c) An Applicant may apply for its formula allocation from the current and two prior NOFAs for which it did not receive an award, provided that the award meets the requirements of Section 304(a).

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B).

ARTICLE III. FORMULA ALLOCATION COMPONENT

Section 300. Eligible Applicants

- (a) Eligible Applicants for the entitlement formula component described in Section 100(b)(1) are limited to the metropolitan cities and urban counties allocated a grant for the federal fiscal year 2017 pursuant to the federal CDBG formula specified in 42 USC, Section 5306.
- (b) Eligible Applicants for the non-entitlement formula component described in Section 100(b)(2) and the competitive grant program component described in Section 100(b)(3) are limited to the Non-entitlement local governments.
- (c) A Local government may delegate another Local government to submit an application and administer on its behalf its formula allocation of Program funds, provided that the Local governments enter into a legally binding agreement and the funds are expended for eligible Activities and consistent with Program requirements. The delegating Local government shall be identified in the application. The administering Local government shall be responsible for all Program requirements.
- (d) A Local government may delegate a Local or Regional Housing Trust Fund to submit an application and administer on its behalf its formula allocation of Program funds, provided that the Local government enters into a legally binding agreement with the Local or Regional Housing Trust Fund and the funds are expended for eligible Activities and consistent with Program requirements. The delegating Local government shall be identified in the application. The Local or Regional Housing Trust Fund shall be responsible for all Program requirements.
- (e) An Applicant shall not be eligible to receive a new allocation of PLHA funds if it has an uncommitted amount of formula PLHA funds greater than the following:
 - (1) Four times the pending annual allocation if the pending annual allocation is \$125,000 or less;
 - (2) \$500,000 if the pending annual allocation is greater than \$125,000 and less than \$500,000;

- (3) The amount of the pending annual allocation if the pending allocation is \$500,000 or more.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B).

Section 301. Eligible Activities

(a) Eligible Activities are limited to one or more of the following:

- (1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is Affordable to Extremely low-, Very low-, Low-, or Moderate-income households, including necessary Operating subsidies.
- (2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.
- (3) Matching portions of funds placed into Local or Regional Housing Trust Funds.
- (4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.
- (5) Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.
- (6) Assisting persons who are experiencing or At risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
 - (A) This Activity may include subawards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded CESH program or HEAP funds for rental assistance to continue assistance to these households.
 - (B) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core

components of Housing First, as provided in WIC Section 8255, subdivision (b).

- (7) Accessibility modifications in Lower-income Owner-occupied housing.
 - (8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.
 - (9) Homeownership opportunities, including, but not limited to, down payment assistance.
 - (10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the Project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an Affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low-interest deferred loan to the Affordable housing Project.
- (b) A Local government that receives an allocation shall use no more than 5 percent of the allocation for costs related to the administration of the Activity(ies) for which the allocation was made. Staff and overhead costs directly related to carrying out the eligible activities described in Section 301 are “activity costs” and not subject to the cap on “administrative costs.” A Local government may share any funds available for administrative costs with entities that are administering its allocation.
 - (c) Two or more Local governments that receive PLHA allocations may expend those moneys on an eligible jointly funded project as provided for in Section 50470 (b)(2)(B)(ii)(IV). An eligible jointly funded project must be an eligible Activity pursuant to Section 301(a) and be located within the boundaries of one of the Local governments.
 - (d) Entitlement Local governments may use the flow of PLHA funds to incentivize private lender loans and to guarantee payments for some or all public agency bond financings for activities consistent with the uses identified in Section 301 “Eligible Activities”. This loan guarantee Activity must be identified and fully explained in the Applicant’s “Plan”.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivisions (b)(2)(B)(ii)(IV), (b)(2)(D)(i-x), and (b)(3).

Section 302. Threshold Requirements

Applicants must meet all the following threshold requirements for participation in the formula allocation:

- (a) **Housing Element compliance:** The Applicant and any delegating Local government, if applicable, must have a Housing Element that has been adopted by the Local

government's governing body by the application deadline and subsequently determined to be in substantial compliance with state Housing Element Law pursuant to GC Section 65585. A Local government's current Housing Element compliance status can be obtained by referencing the Department's website at <http://www.hcd.ca.gov/community-development/housing-element>.

- (b) **APR on the Housing Element submitted to the Department:** The Applicant and any delegating Local government, if applicable, must submit to the Department the APR required by GC Section 65400 for the current or prior year by the application deadline date.
 - (1) Please be advised that the Department will not accept other reports in lieu of the APR. Housing Authority Financial Reports, Redevelopment Reports, and other similar reports will not be accepted as meeting this requirement. If uncertain of the status of the report submittal for a Local government, please contact the Department for more information.
- (c) Submit, by the deadline specified in the NOFA, on a form made available by the Department, a complete application which shall meet the following minimum requirements:
 - (1) Application requests an allocation pursuant to Section 200 in order to carry out one or more of the eligible activities described in Section 301. Except for a jointly funded project as described in Section 301(c), any activities must be carried out within the jurisdiction of the Applicant Local government.
 - (2) Submission of the application is authorized by the governing boards of the Applicant.
 - (3) Certification in the resolution that, if the Local government proposes allocation of funds for any Activity to another entity, the Local government's selection process shall avoid conflicts of interest and shall be accessible to the public. For the purposes of this paragraph, "entity" means a housing developer or program operator; "entity" does not mean an administering Local government to whom a Local government delegates its PLHA formula allocation, pursuant to Section 300(d).
 - (4) A Plan detailing:
 - (A) The manner in which allocated funds will be used for eligible Activities.
 - (B) A description of the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below 60 percent of AMI. Programs targeted at households at or below 60 percent of AMI will be deemed to meet this requirement.

- (C) A description of how the Plan is consistent with the programs set forth in the Local government's Housing Element.
- (D) Evidence that the Plan was authorized and adopted by resolution by the Local government and that the public had an adequate opportunity to review and comment on its content.
- (E) The following for each proposed Activity:
 - (i) A description of each proposed Activity, pursuant to Section 301, and the percentage of funding allocated to it. The description shall specifically include the percentage of funds, if any, directed to AOWH.
 - (ii) The projected number of households to be served at each income level and a comparison to the unmet share of the RHNA at each income level.
 - (iii) A description of major steps/actions and a proposed schedule required for the implementation and completion of the Activity.
 - (iv) The period of affordability and level of affordability for each Activity. Rental Projects are required to have affordability periods of at least 55 years.
- (5) The Plan submitted in response to the NOFA shall be for a term of five years. Local governments shall obtain approval of the Department for amendments made to the Plan in each succeeding year of the term of the Plan. Reallocations of more than 10 percent of funds among Activities require amendment of the Plan, with approval granted by the governing body at a publicly noticed public meeting.
- (6) A certification that, if funds are used for the acquisition, construction, or rehabilitation of for-sale housing projects or units within for-sale housing projects, the grantee shall record a deed restriction against the property that will ensure compliance with one of the following requirements if the property is no longer the primary residence of the homeowner due to sale, transfer or lease, unless it is in conflict with the requirements of another public funding source or law:
 - (A) The PLHA loan and any interest thereon shall be repaid to the Local government's PLHA account. The Local government shall reuse the repayments consistent with Section 301; or
 - (B) The initial owner and any subsequent owner shall sell the home at an Affordable housing cost to a qualified Lower-Income or Moderate-Income household; or
 - (C) The homeowner and the Local government shall share the equity in the unit pursuant to an equity-sharing agreement. The grantee shall reuse the proceeds

of the equity-sharing agreement consistent with this section.

- (7) A certification that, if funds are used for the development of an Affordable Rental Housing Development, the Local government shall make the PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the Project. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust, and a Regulatory Agreement shall restrict occupancy and rents in accordance with the Local government-approved underwriting of the Project for a term of at least 55 years.
- (8) A Program income reuse plan describing how repaid loans will be reused for eligible activities specified in Section 301.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii).

Section 303. Application Review

- (a) Applicants must submit a complete application by the deadline stated in the NOFA in order to be eligible for funding. Application forms provided by the Department will be available upon release of the NOFA and will require Applicants to submit the forms and other documents to demonstrate that the Local government has met threshold requirements.
- (b) The Department may request additional information to complete its review.
- (c) Applications recommended for funding are subject to conditions specified by the Department. Applicants will receive an official letter of award after the Department approves funding recommendations.
- (d) The Department may issue an Over-the-Counter formula allocation NOFA after completing the NOFA process so that Local governments who were not able to submit formula allocation applications by the application deadline will have another opportunity to do so.
- (e) If funding proposed in Local government Plans for AOWH activities is lower than 20 percent of the moneys available in the Fund, the Department may require Local governments to use a specific percentage of their annual formula allocations in some future year for AOWH activities as part of the annual funding process.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(A).

Section 304. Deadlines and Funding Requirements

- (a) The initial PLHA application, including the Plan, must be submitted within 48 months of the budget appropriation (for example, the budget appropriation for 2019 is July 1, 2019, so the application deadline is June 30, 2023).
- (b) Funds allocated to Local governments that do not submit a complete application by the deadline stated in subsection (a) will revert to the Housing Rehabilitation Loan Fund for the Multifamily Housing Program or for Department-administered technical assistance to Local governments.
- (c) A Local government may petition the Department to return any funds allocated to it to be used for the Multifamily Housing Program.
- (d) Except for predevelopment expenses for construction projects funded by PLHA and costs to develop and prepare the Plan and the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the Plan and the PLHA application are subject to the cap on administrative fees.
- (e) After the Standard Agreement and attachments have been finalized, the Local government will follow provided instructions for signing all required documents. The Local government must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instruction.
- (f) After the Standard Agreement has been executed by the state, the Local government may submit a request for 100 percent of the funds allocated to be used for eligible expenditures for the Activity(ies) that received the award, and subject to the terms and conditions of the Standard Agreement.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i) and subdivision (b)(2)(B)(ii)(VI).

ARTICLE IV. COMPETITIVE ALLOCATION COMPONENT

Section 400. Eligible Applicants

- (a) Eligible Applicants for the non-entitlement competitive allocation described in Section 100(b)(3) are limited to Non-entitlement local governments. For development of Rental Housing Projects, the Sponsor must be a co-Applicant.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i)(I).

Section 401. Eligible Activities

- (a) Eligible Activities are limited to the following and must take place within the jurisdiction of the Applicant Local government:
- (1) Development of new multifamily rental housing that is Affordable to households at or below 60 percent of AMI or substantial rehabilitation of multifamily rental housing that will be Affordable to households at or below 60 percent of AMI, but which is not currently restricted as Affordable housing; or
 - (2) Assistance to persons who are experiencing or At risk of homelessness, including, but not limited to, through rapid rehousing, or rental assistance, supportive services and case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers, or new construction, rehabilitation, or preservation of permanent or transitional rental housing.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i)(I)(ia), (b)(2)(B)(i)(I)(ib) and subdivision (b)(2)(B)(ii)(V).

Section 402. Threshold Requirements

Applicants must meet all the following threshold requirements for participation in the competitive allocation:

- (a) **Housing Element compliance:** The Applicant must have a Housing Element that has been adopted by the jurisdiction's governing body by the application deadline date and subsequently determined to be in substantial compliance with state Housing Element Law pursuant to GC Section 65585. A Local government's current Housing Element compliance status can be obtained by referencing the Department's website at <http://www.hcd.ca.gov/community-development/housing-element>.
- (b) **APR on the Housing Element submitted to the Department:** The Applicant must submit to the Department the APR required by GC Section 65400 for the current or prior year by the application deadline date.
- (1) Please be advised that the Department will not accept other reports in lieu of the APR. Housing Authority Financial Reports, Redevelopment Reports, and other similar reports will not be accepted as meeting this requirement. If uncertain of the status of the report submittal for a Local government, please contact the Department for more information.
- (c) Submit by the deadline specified in the NOFA, on a form made available by the Department, a complete application which shall meet the following minimum requirements:
- (1) Application requests a grant pursuant to Section 100(b)(3) in order to carry out one

or both of the eligible Activities set forth in Section 401.

- (2) Submission of the application is authorized by the governing board of the Applicant and by the developer co-applicant, if any.
- (3) Certification in the resolution that, if the Local government proposes allocation of funds for any Activity to another entity, the selection process shall avoid conflicts of interest, and shall be accessible to the public.
- (4) Demonstration of readiness, including site control for development Projects, land use entitlements, environmental review and commitments of other funding and resources required, as further set forth in the NOFA;
- (5) Underwriting requirements:
 - (A) Uniform Multifamily Regulations Subchapter 19 of Title 25, Division 1, Chapter 7 (commencing with Section 8300), as amended from time to time, and the Multifamily Housing Program Guidelines (commencing with Section 7300), as amended from time to time, are hereby incorporated by reference into this subchapter and shall apply to Rental Housing Developments receiving assistance under the PLHA competitive allocation. In the event of a conflict between the provisions of Subchapter 19 and these Guidelines, the provisions of these Guidelines shall prevail.
 - (i) Section 8312(c) of the Uniform Multifamily Regulations is hereby amended to read:
 - (c) For Projects utilizing 4 percent tax credits, Developer Fee payments shall not exceed the amount that may be included in Project costs pursuant to 4 CCR, Section 10327. In addition, the Developer Fee paid from development funding sources shall not exceed the following:
 - (1) For acquisition and/or rehabilitation Projects, or adaptive reuse Projects, the lesser of the amount of Developer Fee in Project costs or \$2,000,000.
 - (2) For new construction Projects, the base limit shall be the lesser of the amount that may be included in Project costs or \$2,200,000. To arrive at the final limit on Developer Fee paid from development funding sources, the base limit shall then be multiplied by a ratio that is the average of (i) the difference between 2 and the Project's high-cost ratio, as calculated pursuant to 4 CCR, Section 10317(i)(6) or successor language and (ii) 100 percent.
 - (ii) Section 8312(d) of the Uniform Multifamily Regulations shall not apply.
 - (iii) Section 8314(a)(1)(A) of the Uniform Multifamily Regulations is amended to read:
 - (A) Approved deferred Developer Fee, pursuant to Section 8312, provided that the aggregate of the Developer Fee paid from sources and paid as deferred shall not exceed \$3,500,000.

(B) Period of affordability: All assisted rental units shall be restricted for not less than 55 years.

(C) All development Projects shall demonstrate fiscal integrity.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii).

Section 403. Selection Criteria

(a) Applications submitted within a competitive funding round shall be evaluated using the following criteria. Total available points shall equal 100.

1. Priority Points – 25 points

A. Population - 5 points

(i) If the Applicant is a county that has a population of 200,000 or less within the unincorporated areas of the county, the Applicant shall receive all points.

B. Prior Award – 5 points

(i) If the Applicant did not receive an award based on the formula specified in 42 USC, Section 5306 in 2016, the Applicant shall receive all points.

And either C (i) or C (ii) or C (iii) below:

C. Activity

(i) Assistance for Homeless Persons through Program Activities – 15 points

(a) Applications to assist persons experiencing or At risk of homelessness, including, but not limited to, through programs providing rapid rehousing, or rental assistance, or operating assistance to navigation centers shall receive all points.

Or

(ii) Assistance to Homeless Persons through Development of Navigation Centers– 15 points

(a) Applications for construction of navigation centers shall receive all points.

Or

(iii) Assistance for Homeless Persons through Rental Projects – 15 points

(a) Applications for the new construction, rehabilitation, or preservation of permanent or transitional rental housing in which all or at least 10 percent of the units are restricted to occupancy by tenants who are homeless or At risk of homelessness shall receive all points.

2. Evaluation Criteria – 75 points

Precise scoring for these factors will be set forth in the NOFA.

A. Community Need – 30 points

(i) Applicants will receive up to a maximum of 30 points based on the rate of households experiencing the most severe housing need according to the most recent HUD CHAS dataset in the Applicant Local government. Applicants will receive points in proportion to this percentage.

B. Applicant Administrative Experience – 15 points

(i) Applicants with prior experience administering local, state or federal affordable housing or community development programs or who have entered into a contract with an entity with prior experience in the implementation of local, state or federal affordable housing or community development programs will receive up to 15 points.

C. Demonstrated Capacity – 30 points

(i) Capacity points will be based on:

(a) Sponsor experience in Affordable Rental Housing Development and ownership (Up to 30 points) or

(b) Navigation center development experience (for development of these facilities) (Up to 30 points) or

(c) Program Operator experience (for non-development Activities) (Up to 30 points)

(b) Where applications requesting funds for more than one eligible Activity pursuant to Section 401 are permitted by the NOFA, each Activity will receive a separate score for each rating factor, and have an individual Activity total. It is possible that one Activity may score highly enough to receive an award, and the other Activity does not.

(c) In the event of tied point scores and insufficient funding for both applications, the Department shall rank the tied applications as follows:

(1) If one of the tied applications is for an Affordable Rental Housing Development and the other is for a program Activity or development of a navigation center, the

- Affordable Rental Housing Development application will be selected for funding;
- (2) If one of the tied applications is for a navigation center and the other is for a program Activity, the navigation center will be selected for funding;
 - (3) If both of the tied applications are for Affordable Rental Housing Developments, the Project with the lowest weighted average affordability of Restricted Units will be selected;
 - (4) If both of the tied applications are for navigation centers, the facility that provides overnight shelter to the greatest number of people will be selected;
 - (5) If both of the tied applications are for programs, the Local government with the highest rate of households experiencing the most severe housing need according to the most recent HUD CHAS dataset will be selected.
- (d) In the event there are insufficient funds to fulfill the entire funding request for the next highest scored application (Application A), the Department will determine whether Application A is feasible without the full funding request. If Application A is not feasible without full funding, the Department may offer the remaining funds to the application whose score is immediately below Application A. If the remaining funds are insufficient to fulfill the funding request for that application (Application B), the Department will again determine whether this application is feasible without the full funding request. If Application B is not feasible without the full funding request, the Department will perform the same analysis for the application whose score is immediately below Application B.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(i)(I)(ia) and subdivision (b)(2)(B)(ii)(V).

Section 404. Application Review

- (a) Applicants must submit a complete application by the deadline stated in the NOFA in order to be eligible for funding. Application forms provided by the Department will be available upon release of the NOFA and will require Applicants to submit the forms and other documents to demonstrate that the Local government has met threshold requirements. The application will require submission of documentation adequate to demonstrate that the application has earned the appropriate number of points.
- (b) The Department may request additional information to complete its review, provided that the new information would not affect scoring.
- (c) Applications recommended for funding are subject to conditions specified by the Department. Applicants will receive an official letter of award after the Department approves funding recommendations.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii).

Section 405. Deadlines and Funding Requirements

- (a) Applicants will be required to enter into a state Standard Agreement (Standard Agreement) that will set forth conditions for funding and milestones that are required to be met.
- (b) After the Standard Agreement and attachments have been finalized, the Local government will follow provided instructions for signing all required documents. The Local government must submit all supporting materials and a signed Standard Agreement within the timeline provided in the instructions or risk forfeiting the grant award.
- (c) Except for predevelopment expenses for construction projects funded by PLHA and the costs to develop and prepare the PLHA application, no costs incurred more than one year prior to commitment by the Local government may be paid from PLHA funds. Reimbursement of expenses to prepare the PLHA application is subject to the cap on administrative fees.
- (d) Grant funds shall not be disbursed until:
 - (1) the Department authorizes loan closing, in the case of development projects; or
 - (2) all general and special conditions have been complied with, in the case of other Activities.
- (e) If funds are used for the development of an Affordable Rental Housing Development, the Local government shall make the PLHA assistance in the form of a low-interest, deferred loan to the Sponsor of the project. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust, and a Regulatory Agreement shall restrict occupancy and rents in accordance with the Department-approved underwriting of the project for at least 55 years.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(VI).

ARTICLE V. ADMINISTRATION

Section 500. Accounting Records

- (a) The grantee shall establish a separate ledger account for receipts and expenditures of grant funds and maintain expenditure details in accordance with the approved work plan, budget, and schedule. Separate bank accounts are not required.
- (b) The grantee shall maintain documentation of its financial records for expenditures incurred during the course of the PLHA Activity in accordance with generally accepted accounting principles. Such records shall be kept for at least five years after the close-out report is submitted to the Department.

- (c) The Department or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to the PLHA grant.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(III) and subdivision (b)(2)(B)(IV) and subdivision (b)(3).

Section 501. Audits/Monitoring of Project Files

- (a) Grantee shall maintain PLHA files which, at a minimum, should include the following information and reports:
 - 1) Project/Activity description
 - 2) Land/site Information
 - 3) Planning & zoning history (as appropriate)
 - 4) Records of public hearings and public comments
 - 5) Relocation needs (as appropriate)
 - 6) Contracts, loan and grant agreements, Standard Agreement
 - 7) Environmental records & reports/findings (as appropriate)
 - 8) Design/engineering reports & plans (as appropriate)
 - 9) Description of targeted beneficiaries, services to be provided, household incomes, special needs
 - 10) PLHA Activity costs, invoices, purchase orders, sources and uses of funds for PLHA Activities, terms & conditions of financings, draws and all supporting documentation, change orders (as appropriate)
 - 11) Activity schedule and amendments
 - 12) History of Plan amendments
 - 13) Procurement policy used for PLHA Activity(ies)
- (b) The grantee shall maintain such records for possible audit for a minimum of three years after the close-out report is submitted, unless a longer period of records retention is stipulated in the Standard Agreement.
- (c) The grantee shall be responsible for monitoring Rental Housing Developments that received PLHA funds for the term of the loan, including, but not limited to, the Projects' compliance with the occupancy and rent requirements set forth in the Regulatory Agreement, compliance with reserve requirements, and the compliance with habitability standards.
- (d) The grantee shall be responsible for monitoring AOWH loans to assure that the homes remain Owner-occupied.
- (e) If requested by the Department, the grantee shall obtain a report from a qualified,

licensed third party that certifies to the amounts of disbursement and identifies the specific Activities for which the disbursements were made. Such a report is permitted to be a component of the A-133 audit.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(IV) and subdivision (b)(3).

Section 502. Cancellation and Termination

- (a) In the event that it is determined, at the sole discretion of the Department, that the grantee is not meeting the terms and conditions of the Standard Agreement, the Department shall issue a notice to stop work. Immediately upon receiving the written notice to stop work, the grantee shall cease all work under the Standard Agreement. The Department has the sole discretion to determine the grantee's compliance with the terms and conditions after issuance of a stop work order, and to deliver a written notice to the grantee to resume work under this Standard Agreement.
- (b) The Department shall terminate the Standard Agreement if the grantee is not in compliance with the Guidelines or the terms and conditions of the Standard Agreement. At least 30 days prior to the effective date of the termination of the Standard Agreement, the Department shall provide written notice to the grantee of its intent to cancel the funding allocation. The notice shall specify the reason for early termination and may permit the grantee or the Department to cure any deficiency(ies) prior to the early termination date. The grantee will submit requested documents to the Department within 30 days of the early termination notice.
- (c) Failure to meet reporting requirements will result in notice to the grantee that it must satisfactorily cure any deficiencies within three months of the notice or it will forfeit the following year's PLHA formula allocation and be ineligible for a competitive award. The Local government will forfeit subsequent PLHA formula allocations and be ineligible for a competitive award until the Department determines that the Local government has met reporting requirements.
- (d) The Department may, as it deems appropriate or necessary, request the repayment of funds from a Local government or offset future years' funds, or pursue any other remedies available to it by law for failure to comply with the Guidelines and/or the terms and conditions of the Standard Agreement.
- (e) Co-Applicants may be adversely impacted by a notice to stop work and/or termination if one grantee is deemed by the Department to not meet the terms and conditions of the Standard Agreement, or fails to meet the reporting requirements outlined in Section 503.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(IV) and subdivision (b)(3).

Section 503. Reporting

- (a) The Department shall provide grantees with reporting formats and instructions.
- (b) Annual Reports are required from all grantees pursuant to HSC Section 50470(b)(2)(B)(ii)(III) each year by July 31 for the term of the Standard Agreement. The Annual Report shall document the uses and expenditures of all awarded allocations and outcomes achieved. This report must be signed by both the Local government's PLHA administrator and the Local government's City Manager (or his/her designee), or Chief Executive Officer (or his/her designee) or Chief Financial Officer (or his/her designee). The Annual Report must describe any proposed amendment(s) to the approved Activity and schedule.
- (c) Upon expenditure of all allocated funds and completion of the Activities funded by PLHA, the grantee shall submit a close-out report, which will be part of the Annual Report.
- (d) The Department may request additional information as needed to meet other applicable reporting or audit requirements.

NOTE: Authority cited: HSC Section 50470, subdivision (d). Reference cited: HSC Section 50470, subdivision (b)(2)(B)(ii)(III) and subdivision (b)(2)(B)(ii)(IV).