

**Foreclosure Intervention
Housing Preservation Program
Draft Guidelines**



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Foreclosure Intervention Housing Preservation Program Guidelines

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ARTICLE I. GENERAL OVERVIEW/GENERAL PROGRAM REQUIREMENTS

Section 100. Purpose and Scope

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

These guidelines implement and interpret Chapter 8.6 (commencing with Section 50720) of Part 2 of Division 31 of the Health and Safety Code. Specifically, Health and Safety Code Section 50720.2 establishes the Program, administered by the California Department of Housing and Community Development (Department). Health and Safety Code Section 50720.12 states that the Department shall adopt guidelines for the administration of the program.

Section 101. Definitions

In addition to the definitions found in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the HSC Section 50675.2, and in the Uniform Multifamily Regulations (UMR) (Cal. Code Regs., tit. 25, Section 8300 et seq), effective November 15, 2017, the definitions in the Definition Appendix shall apply to these guidelines.

In the event of a conflict, the definitions in the Definition Appendix shall prevail for the purposes of these guidelines and application to the Program. The defined terms will be capitalized as they appear in the guideline text. References to sections herein refer to sections of these guidelines unless otherwise noted.

ARTICLE II. PROGRAM ELIGIBILITY

Section 200. Fund Managers

Health and Safety Code Section 50720.6 states that the Department shall contract with one or more Fund Managers to manage the program until June 30, 2026. The contract with the Fund Manager or the contracts with the Fund Managers may be renewed past June 30, 2026, if funds are available and if deemed appropriate by the Department.

The Department will contract with a team of Fund Managers to implement FIHPP. The team of Fund Managers will include one Administering Fund Manager (AFM) and multiple Implementing Fund Managers (IFMs). The AFM may also serve as an IFM if they wish to and if they meet the qualifications. Collectively, the team of IFMs must serve nonprofits across all California geographies.

The AFM will be the Department's main point of contact and will manage subcontracts with the IFMs and disburse FIHPP funds to the IFMs. The AFM will oversee the

qualification of prospective Qualified Non-Profits (QNP) and Community-Based Non-Profits (CBNP) pursuant to these guidelines. The AFM will develop and implement a plan, subject to Department approval, to hold IFMs accountable for meeting FIHPP program goals. The plan shall include actions to be taken by an IFM (e.g., revision of their Project review and approval process) if its funded Projects have a high rate of significant problems (e.g., acquisition falls through, Rehabilitation costs greatly exceed initial estimates, project does not achieve Stabilization in a timely fashion). The AFM will also manage FIHPP program-wide goals around household income levels served and geographical distribution and manage Capitalized Operating Subsidy Reserves (COSRs) pursuant to these guidelines.

The IFMs will implement the qualification process for prospective QNPs and CBNPs, develop funding application forms for Project Sponsors to apply for funding, review and approve funding applications, and make loans and grants pursuant to these guidelines. IFMs will also oversee the Project through Stabilization, including disbursing Rehabilitation funds in accordance with the funding agreement.

Each Fund Manager must be a nonprofit lender with experience making real estate loans in this state, or be a housing trust fund operated by a city, a county, a city and county, or a joint powers authority as described in Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code operated for the purpose of funding the development, acquisition, rehabilitation, or preservation of affordable housing for low- or moderate-income residents.

The AFM should also have experience managing large pools of funds and have experience managing multiple lenders as subcontractors.

Each IFM must also meet the following criteria:

- Have originated and serviced loans to develop, maintain, improve, or acquire affordable housing, including at least five million dollars (\$5,000,000) in acquisition loans.
- Demonstrate an ability to process loans for property acquisitions in an expedient manner sufficient to deploy loans necessary to purchase real property in trustee's sales pursuant to the time constraints described in Section 2924m of the Civil Code.

Each IFM should also have experience working with nonprofits who do acquisition and Rehabilitation of small properties (including Community Land Trusts and community development corporations) and that are deeply connected to residents in neighborhoods and communities, with an emphasis on historic communities of color.

Up to \$475 million in FIHPP funds will be provided by the Department to the AFM in the form of grants. An initial grant of \$100 million will be made at time of contract execution. The AFM can request that the Department release the next \$100 million in funding (or the remaining funds if less than \$100 million remains to be disbursed to the AFM) each

time the AFM can demonstrate that 75 percent of the most recent grant received has been encumbered. If any funds remain with the Department by December 31, 2025, the Department has the option to disburse some or all of the remaining funds to the AFM by that date. The AFM must develop a plan to disburse funds to the IFMs; the plan is subject to Department approval.

Any interest accrued on FIHPP funds by a given IFM shall be accounted for separately and returned to the Department when that IFM ceases providing FIHPP funding to Project Sponsors. The Department will use these returned funds for long-term monitoring of FIHPP-funded Projects.

Section 201. Eligible Sponsors

Eligible Sponsors shall be any one of the following:

- (A) Eligible bidders in Section 2924m of the Civil Code other than “prospective owner-occupants” as defined in paragraph (1) of subdivision (a) of Section 2924m of the Civil Code.
- (B) An organization whose primary activity is the development and preservation of affordable housing that is at least one of the following:
 - a. An incorporated nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)).
 - b. A nonprofit corporation as that term is defined in Section 50091 of the Health and Safety Code.
- (C) A limited liability company that satisfies both of the following criteria:
 - a. A Community Land Trust holds a controlling interest in the company.
 - b. A Community Land Trust is the managing member of the company.

In order to apply for FIHPP funds, an organization must first become a Qualified Non-Profit (QNP) or Community-Based Non-Profit (CBNP). The qualification process will be managed by the FIHPP Fund Managers. Each prospective QNP or CBNP must submit an application to the AFM. The AFM will assign each application to an IFM for review; the IFM will approve or deny the application.

QNPs must have experience in acquiring and rehabilitating properties and managing those properties as affordable housing, as detailed below. Some geographic areas of the state may lack nonprofits with specific experience in acquisition and rehabilitation. If the IFM responsible for managing FIHPP funds in a given geographic area does not receive sufficient QNP applications from nonprofits with acquisition and rehabilitation experience after three months, the IFM may permit nonprofits in that geographic area only to apply to become a QNP if they have experience in developing and managing affordable housing, as detailed below. These QNPs are highly encouraged to seek technical assistance from FIHPP technical assistance providers on acquisition and rehabilitation of small properties.

If the AFM determines that one or more IFMs have not been able to qualify a sufficient number of organizations as QNPs in their geographic area using the experience and capacity requirements outlined in these guidelines after six months, the IFM may use alternative experience that demonstrates developer capacity to approve QNPs, subject to AFM review and approval.

If an organization does not fully meet the experience and capacity requirements to become a QNP, the organization may:

1. Enter into a contract or agreement with an organization that does meet the requirements and apply as a Partnership to become a QNP. The contract or agreement must be fully executed before the QNP can receive FIHPP funds. Agreements with a commitment to partner on at least three projects, where both parties equitably share project decision-making, and where the partner with less experience has an option to purchase the property, are preferred.
2. Apply to become a CBNP, as detailed below. CBNPs are eligible to receive FIHPP funding for projects 1- to 5-units in size.

Section 201.1 Organization Type

In order to become a QNP or CBNP, the organization (or all entities in a Partnership) must be one of the following:

1. An organization whose primary activity is the development and preservation of affordable housing that is at least one of the following:
 - a. An incorporated nonprofit organization as described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) that is exempt from taxation under Section 501(a) of that code (26 U.S.C. Sec. 501(a)).
 - b. A nonprofit corporation as that term is defined in Section 50091 of the Health and Safety Code.
2. A limited liability company that satisfies both of the following criteria:
 - a. A Community Land Trust, as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, holds a controlling interest in the company.
 - b. A Community Land Trust, as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, is the managing member of the company.
3. A nonprofit association, nonprofit corporation, or cooperative corporation in which an eligible tenant buyer or a prospective owner-occupant is a voting member or director.
4. A limited-equity housing cooperative as defined in Section 817 of the Civil Code.

Section 201.2 Commitment to Racial Equity

The organization (or all entities in a Partnership) must have a demonstrated commitment to advancing racial equity and reducing racial disparities in housing outcomes. As part of the application to become a QNP, organizations must provide:

1. A profile describing the organization's mission, length of existence, staff experience, characteristics of its Board of Directors, and its commitment to affordable housing and advancing racial equity,
2. A narrative analysis of racial disparities in housing outcomes in the organization's geographic coverage area, e.g., income by race, housing cost burden by race, history of displacement of residents of color,
3. A description of actions the organization is already taking to reduce racial disparities in housing outcomes, e.g., tracking the race and ethnicity of residents served by the organization, engaging with residents to inform the organization's work, marketing projects to different racial and ethnic groups, using a tenant or homebuyer selection process that does not disadvantage certain racial groups (e.g., using a lottery for applicant selection rather than first-come-first-served, reducing or eliminating use of criminal background checks or credit checks), and
4. A plan for additional actions the organization will take to reduce racial disparities in housing outcomes (see examples under previous item).

Section 201.3 Development Experience and Capacity

Organizations applying to become QNPs must demonstrate sufficient staff and organizational capacity to successfully execute the Affordable Housing Development transaction for which FIHPP funding is provided. In cases where the Applicant to become a QNP is a Partnership, at least one organization in the Partnership must meet the experience and capacity requirements.

To become a QNP, the Applicant must have successfully acquired, or acted as part of a Partnership with another organization on an acquisition of, at least three (3) market-rate residential properties which they converted to Affordable Housing Developments in the last 10 years. The Applicant must also have completed or acted as part of a Partnership with another organization on at least one (1) project that included Rehabilitation. The same project can count as both one of the three required acquisitions and the one required Rehabilitation. In geographic areas that lack nonprofits with specific experience in acquisition and rehabilitation, the Applicant must have successfully completed at least three (3) Affordable Housing Development projects within the last 10 years. Applicants must provide details on all completed Affordable Housing Development projects with which they were involved within the last 10 years, including the role(s) the organization(s) played in each project.

Project Management Capacity: The Applicant's project manager must have experience with at least one affordable housing acquisition (or Affordable Housing Development) or be assisted by a consultant or other staff person with greater experience and the demonstrated capacity to oversee the project. When using a consultant, the consultant's resume should demonstrate that the consultant has successfully managed all aspects of at least two (2) comparable development projects in the recent past.

Construction Management Capacity: The Applicant must identify specific staff or consultant(s) who will provide construction management functions on behalf of the

owner, including permit applications and expediting, cost analysis, completion evaluations, change order evaluations, scope analysis and schedule analysis. The Applicant's construction manager must have experience with at least one affordable housing project.

An organization that does not meet the developer experience and capacity qualifications may apply to the FIHPP technical assistance provider for a capacity building grant and/or apply to become a CBNP, as detailed below.

Section 201.4 Financial Stability and Operational Capacity

QNP's must be financially stable and demonstrate sufficient staff and organizational capacity to own and operate the proposed housing in a manner that is sustainable over the long term.

Financial Stability: The Applicant must provide three years of financial data, staffing, and board of directors information, development history, list of real estate owned, litigation history, and organizational good standing information.

Property Management Experience: The Applicant or the Applicant's management agent must have managed at least one Affordable Housing Development for at least 24 months.

Asset Management Capacity: The Applicant must describe asset management staffing plans and show how they manage the financial performance and capital needs of their existing and future assets, including timely performance of capital needs assessments, maintaining adequate replacement reserves and timely collection of tenant rents if applicable.

Program Management Capacity: The Applicant must demonstrate that they have:

1. Experience with program design and legal documents to ensure long-term affordability (e.g., ground lease, deed restriction) for every type and tenure of project for which they intend to seek FIHPP funding (e.g., ownership, rental, cooperative ownership)
2. Resident selection procedures that meet fair housing requirements (including ensuring that if a property transitions to cooperative ownership, fair housing requirements continue to be met)
3. A monitoring plan to ensure ongoing compliance (e.g., annual verification of primary residence, annual income verification (for rental properties))
4. A plan to ensure that properties in the organization's portfolio are transferred to another organization that will maintain long-term affordability if the organization shuts down, is determined to be out of compliance, or is otherwise no longer a fit and willing owner.

An organization that does not meet the financial stability and operational capacity qualifications may apply to the FIHPP technical assistance provider for a capacity building grant and/or apply to become a CBNP, as detailed below.

Section 201.5 Community-Based Non-Profits

If an organization does not fully meet the experience and capacity requirements to become a QNP, it may apply to become a Community-Based Non-Profit (CBNP). CBNPs are eligible to receive FIHPP funding for projects 1- to 5-units in size. To become a CBNP, the Applicant must have a plan in place to build the necessary capacity to become a QNP. This plan can be an existing business plan or strategic plan, or it can be based on the use of FIHPP capacity building grants and technical assistance.

The Applicant must also have at least five (5) years of experience in the delivery of culturally competent services and/or community development programs to Low- or Lower-Income households in their community. For the purposes of these guidelines, “culturally competent services” means services that respect diversity in the community and respond effectively across cultures, regardless of differences in language, communication styles, beliefs, attitudes, and behaviors. The organization must demonstrate in their application that they have community knowledge, commitment to long-term community investment, and population-specific cultural competency, all through a combination of the following: receipt of grant funds for services within the relevant neighborhood or community, cultural and linguistic competency on staff, a record of hiring from the community, and membership in or recruitment from a local Urban League (or substantially equivalent) organization.

The sufficiency of the foregoing qualifications shall be evaluated in the reasonable discretion of the IFM.

Section 201.6 Capacity Building Grants

The Department will make funding available for capacity building grants to nonprofits to build out their organizational capacity to implement FIHPP. Eligible expenses include:

- Staff or consultants, for responsibilities including:
 - o resident outreach
 - o project management
 - o asset management
 - o property management
 - o construction management
- Other activities such as staff training and organizational business planning

Organizations are strongly encouraged to seek creative ways to meet staffing needs that achieve economies of scale, such as sharing staff or consultants among multiple organizations.

The Department will contract with a technical assistance (TA) provider to support nonprofits in implementing FIHPP. The TA provider will be responsible for managing this grant process, including:

- Developing and implementing a grant application process

- Developing and implementing an evaluation and award decision-making process
- Disbursing grant funds to awarded grantees
- Monitoring grantees' progress toward their grant commitments

In the grant application evaluation and award process, the TA provider shall:

1. Invest heavily in organizations rooted in and serving communities that have experienced current and historical marginalization and discrimination.
2. Seek geographic representation, with a goal of one or more QNPs and/or CBNPs in every region of the state where there is a need for FIHPP acquisitions.
3. Invest deeply for the long term, with a goal of QNPs/CBNPs that are well-resourced and able to engage in acquisition and rehabilitation of small properties for the long term. This may mean fewer larger grants rather than more smaller grants.

Section 202. Eligible Projects

Eligible properties for FIHPP acquisitions:

1. Real property subject to a trustee's sale pursuant to Section 2924m of the Civil Code wherein an eligible bidder has made a bid or represents an intention to bid using funds from the program.
2. Real property subject to a preforeclosure intervention sale, meaning a sale of a 1 to 25 unit residential real property that is subject to a recorded notice of default by a trustee representing a beneficiary at the time of the sale. This can include short sales.
3. Real property subject to a foreclosure risk intervention sale, meaning a sale of a 1 to 25 unit residential real property that is not owner occupied and that exhibits indicators of foreclosure risk at the time of sale including, but not limited to, the following:
 - a. There is a mortgage delinquency of at least 90 days.
 - b. There is a delinquency on two or more property tax payments.
 - c. The owner of the property is a debtor in a bankruptcy proceeding.
 - d. There is tenant-initiated litigation against the owner of the property on the basis of lack of habitability.
 - e. A local government body responsible for enforcing building codes has deemed the property partially or fully uninhabitable.
 - f. The property has outstanding citations from a local government body for habitability problems.
 - g. The property is in substandard condition as evidenced by:
 - a. Photos/videos of the property
 - b. Violations of, or multiple complaints related to, documentable housing or building code deficiencies filed pursuant to California Housing Law or local municipal code, including on other properties owned by the same owner.
4. Real property subject to a recorded notice of default.

Buildings can be single-family homes, duplexes, triplexes, apartments, townhomes, or condominiums. Mixed-use buildings are eligible provided that the majority of the building is used for residential purposes.

ARTICLE III. PROGRAM REQUIREMENTS

Section 300. Eligible Use of Funds

Generally, most costs associated with acquisition and rehabilitation are eligible uses of program funds, including the following:

- Pre-acquisition due diligence costs
- Purchase costs
- Holding costs associated with the property such as taxes, insurance, and debt service
- Option fees
- Due diligence reports, including environmental assessments and property inspections
- Legal costs
- Architectural and engineering expenses, as applicable
- Appraisals
- Gap financing costs
- Construction costs associated with rehabilitation
- Capitalized replacement reserves
- Temporary relocation costs
- Costs associated with the real property such as tax liabilities or fines from property code violations

Projects serving households making 50 percent of AMI or less are also eligible for funds for a Capitalized Operating Subsidy Reserve (COSR) for up to 20 years of operating subsidy (see details below).

QNP and CBNP may apply for FIHPP funds to repay eligible costs incurred on or after July 21, 2021 for FIHPP-eligible projects.

Section 301. Cost Limitations

The AFM, in collaboration with the IFMs, will be responsible for developing a consistent set of project-level underwriting criteria and guidance on cost limitations for use by all IFMs, including minimum and maximum developer fees commensurate with the need for financial stability of Project Sponsors. The initial underwriting criteria and guidance on cost limitations must be reviewed and approved by the Department.

When developing project-level underwriting criteria and guidance on minimums and maximums for pro forma assumptions, the AFM should base the numbers on actual values (e.g., costs, vacancy rates) for small-scale acquisition and rehabilitation projects.

Smaller projects are unable to achieve the same economies of scale as larger projects, so items like per-unit property management and asset management costs are likely to be higher. The AFM should refine the underwriting criteria and pro forma guidance numbers over time as the IFMs fund more small-scale acquisition and rehabilitation projects.

Project Sponsors and IFMs are encouraged to ensure projects are adequately capitalized for long-term success, including with adequate contingencies and operating and replacement reserves.

Section 302. Type and Term of Funding

Nonprofits must acquire properties quickly in order to compete with investors. The Department recognizes that small-scale acquisition and rehabilitation of properties at risk of foreclosure inherently brings some risk. Requiring nonprofits to become QNPs or CBNPs before receiving funding mitigates some of that risk. The funding application process and budget/underwriting process should prioritize speedy acquisition and the long-term success of the Project.

IFMs shall make predevelopment funding, including funds for earnest money deposits and funds for pre-acquisition due diligence activities and reports, available to QNPs and CBNPs in an expeditious manner, including before the QNP/CBNP has a specific FIHPP-eligible project to pursue.

IFMs shall also make acquisition and Rehabilitation funding available in an expeditious manner. IFMs are encouraged to develop creative ways to work with QNPs and CBNPs on a more programmatic basis rather than just project-by-project; for example, by instituting some form of a “line of credit” the QNP/CBNP can easily draw on.

IFMs shall provide Sponsors with the option to receive funding either a) in the form of a grant (or a zero-interest, forgivable loan with a minimum 5-year term and payment deferred until the end of the term) or b) in the form of a below-market interest rate loan with a minimum 55-year term and payment deferred until the end of the term.

Nonprofits must acquire properties quickly in order to compete with investors, limiting the amount of due diligence that can be done prior to acquisition. As such, Sponsors may discover additional rehabilitation needs after property acquisition that could not have reasonably been known before acquisition. If the Sponsor discovers additional rehabilitation needs after property acquisition that could not have reasonably been known before acquisition, they can apply for additional FIHPP funds for the additional rehabilitation.

As the project approaches Stabilization, the Sponsor and IFM will work closely together on the long-term operating budget for the property, including identifying how much (if any) outside financing the project can/will secure from other sources to take out a portion of the initial FIHPP funding. The Department recognizes that some Projects, particularly small rental Projects that serve Very Low-Income households, may not be

able to secure outside financing and will need all of the initial FIHPP funds to remain with the Project as long-term gap financing.

After any outside financing has been secured and the relevant portion of the initial FIHPP funds have been repaid, the remainder of the initial FIHPP funding shall remain with the Project as long-term gap financing. If the initial FIHPP funding was provided as a 55-year loan, the loan shall be assigned to the Department by the IFM.

IFMs are encouraged to seek creative ways to use any outside financing secured by the Sponsor to support that Sponsor in achieving FIHPP program goals (for example, using the outside financing to fully capitalize Project reserves, or allowing funds obtained through outside financing to remain with the Sponsor for use on a future FIHPP acquisition).

Section 303. Maximum Funding Amounts

There are few sources of public or private capital available for acquisition and rehabilitation of small properties. Sponsors are encouraged but not required to leverage FIHPP funds with other funds. FIHPP funds can be used for up to 100 percent of eligible Project costs. No developer equity is required.

The maximum funding amount per unit for acquisition and Rehabilitation combined is \$450,000 for multi-family properties or \$550,000 for single-family properties. These amounts will be adjusted annually based upon increases in the Consumer Price Index. Any COSR for which the project may be eligible will be in addition to this per-unit acquisition and Rehabilitation maximum. The amount of FIHPP funding provided will vary based on the household income levels the Project will serve. The maximum award amount per Project, including all eligible capital and COSR costs, is \$10,000,000. IFMs may make additional funding available on a case-by-case basis for Projects that provide exceptional community benefit (for example, providing very deep affordability and/or preventing displacement).

Section 304. Capitalized Operating Subsidy Reserves

Projects serving households making 50 percent of AMI or less are also eligible for a Capitalized Operating Subsidy Reserve (COSR) for up to 20 years of operating subsidy if there is a demonstrated financial need, as determined by the IFM. The AFM or their designated agent ("managing entity") is responsible for managing all COSRs.

Up to \$175,000 per unit may be provided for a COSR to address project operating deficits. This amount will be adjusted annually based upon increases in the Consumer Price Index. The COSR shall be sized to cover anticipated operating deficits attributable to the Assisted Units for a minimum of 20 years. The total amount of each project COSR will be determined based upon the individual project underwriting performed by an IFM pursuant to the requirements of these guidelines.

The Sponsor must annually submit an actual operating budget for the Project to the managing entity. The managing entity will make an annual COSR disbursement to the Project based on the actual operating budget for the prior operating year.

If, after review of the actual operating budget for a given year, the managing entity finds that the Project did not need as much from the COSR as it received that year, the managing entity shall do one of the following:

1. Provide less in COSR payments in a subsequent year to make up the difference between what the Project received and the actual amount of the operating deficit in the prior year;
2. Require the Project to return to the managing entity the amount provided that was in excess of the amount of the operating deficit. Any such amount returned shall be deposited to the Project's COSR subaccount; or
3. Recalculate the remaining amount of COSR funds available over the remaining years until the twentieth year and inform the Sponsor of an allowable COSR withdrawal amount per year, with the intent of keeping the COSR available for the full 20 years.

If, after review of the Project's first five years of annual operating budgets, the managing entity finds that the Project has used more than 25 percent of the total amount of the Project's COSR funds, the managing entity reserves the right, at its sole discretion, to impose annual limits for withdrawals of the remaining COSR funds. The managing entity reserves the right, at its sole discretion, to implement the same COSR review process at years 10 and 15 to determine if COSR withdrawals may be greater than 5 percent per year, or greater than the limits imposed at a previous fifth-year COSR review in order to determine if different limits on COSR withdrawals shall be imposed for the remaining years until the twentieth year. If there are funds remaining in the Project COSR after the twentieth year, the managing entity reserves the right, at its sole discretion, to implement a similar process for determining the amounts available for allocation. Any funds remaining in the COSR after the twentieth year shall continue to be disbursed by the managing entity to the Project in accordance with the requirements of this section.

In circumstances where the Sponsor has exhausted available operating funding, including the COSR, and demonstrated to the AFM that the Project is no longer feasible, the AFM may approve an increase in income levels served by the Project, to the minimum extent required for fiscal integrity, in five percent increments up to 80 percent AMI.

Section 305. Affordability Requirements

All vacant units in FIHPP-funded properties must be restricted in one of the following ways:

1. By those conditions of a contract described in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

2. By those conditions of a contract described in paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
3. To persons and families of Extremely Low, Very Low, Low, or Moderate Income, with an affordable sales price or an affordable Rent, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, for a minimum of 55 years. No more than 25 percent of total FIHPP funds shall be used to support projects serving households of Moderate Income. A property may be restricted by recording a lease agreement, ground lease agreement, or other recorded contractual agreement between a borrower or grantee and the residents of the property or between a borrower or grantee and a resident-controlled corporation or association. Any agreement made between a borrower or grantee and a resident-controlled corporation or association shall ensure that the housing units are affordable to Lower Income households, as defined in Section 50079.5 of the Health and Safety Code.

Properties can be managed as affordable homeownership, rental, or cooperative ownership properties. The detailed affordability requirements for each Project shall be outlined in the Project's Regulatory Agreement.

Section 306. Rents for Occupied Units

If a Unit is already occupied upon acquisition, the following guidelines apply. When a Unit is vacated, the following guidelines will no longer apply, and the Unit shall be restricted as per the Regulatory Agreement for the Project.

Section 306.1 Over-income occupants

Units with over-income occupants at the time of acquisition are exempt from the affordability restrictions in these guidelines only until the Unit is vacated due to natural turnover and available to be re-rented or resold. Over-income households may be charged up to 30 percent of their income for Rent.

Section 306.2 Income-qualifying occupants

Rents on Units with households that meet income qualifications at the time of acquisition may be increased up to 5 percent annually for households with incomes less than 35 percent of AMI or up to 10 percent annually for households with incomes above 35 percent of AMI, up to the affordable Rent for the restricted income level for that unit as per the Project's Regulatory Agreement. At no time should Rents for households that meet income qualifications at the time of acquisition exceed 50 percent of household income.

Section 307. State and Federal Laws, Rules, Guidelines and Regulations

The Sponsor agrees to comply with all applicable state and federal laws, rules, guidelines and regulations that pertain to construction, health and safety, labor, fair employment practices, equal opportunity, and all other matters applicable to the Project,

the Sponsor, its contractors or subcontractors, and any loan or grant activity, including without limitation the following:

Section 307.1 Fair Housing Act

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

Sponsors shall comply with all applicable state and federal law, including, without limitation, the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); the Americans with Disabilities Act of 1990; the Fair Housing Act; the Fair Housing Amendments Act of 1988; the California Fair Employment and Housing Act; the Unruh Civil Rights Act; Government Code section 11135; Section 504 of the Rehabilitation Act of 1973; and all regulations promulgated pursuant to those statutes (including 24 C.F.R § 100, 24 C.F.R. Section 8, and 28 C.F.R. Section 35).

Occupancy restrictions on all properties, including properties structured as cooperative ownership, must be carried out in a manner which does not violate state or federal fair housing laws.

Section 307.2 Americans with Disabilities Act and Accessibility

The Sponsor shall ensure compliance with all applicable state and federal building codes and accessibility laws and standards. All Projects shall adhere to the accessibility requirements set forth in: (i) California Building Code Chapters 11A and 11B; (ii) the federal Fair Housing Act (42 U.S.C. § 3601 et seq.) and its regulations at 24 Code of Federal Regulations part 100 (particularly 24 C.F.R. Section 100.205), and its design and construction requirements, including ANSI A117.1-1986, and the Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994; and (iii) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and its Title II and Title III regulations at 28 Code of Federal Regulations parts 35 and 36; and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and the implementing HUD regulations at 24 Code of Federal Regulations part 8. In addition, developments shall adhere to either the Uniform Federal Accessibility Standards (UFAS) (24 C.F.R. Section 8.32), or HUD's Alternative Accessibility Standard.

Section 307.3 Violence Against Women Act

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

Section 307.4 Pet Friendly Housing Act

Sponsor shall authorize residents of the Project to own or otherwise maintain one or more common household pets pursuant to the Pet Friendly Housing Act of 2017 (California Health & Safety Code, Section 50466).

Section 307.5 California State Prevailing Wage Law.

Program funds awarded under FIHPP are subject to state prevailing wage law, as set forth in Labor Code, Section 1720 et seq. and require the payment of prevailing wages unless the Project meets one of the exceptions of Labor Code, Section 1720 (c) as determined by the Department of Industrial Relations. For example, some FIHPP-funded Projects may be eligible for the exemption in Labor Code §1720(c)(5)(E), which applies to projects for which “the public participation in the project... is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.” Applicants are urged to seek professional advice as to how to comply with state prevailing wage law.

Section 308. Geographic Distribution

To the extent possible, no less than approximately 45 percent of the total funds awarded under FIHPP shall be awarded to projects in Southern California, 30 percent shall be awarded to projects in Northern California, and 20 percent shall be awarded to projects in Rural areas.

For the purpose of geographic distribution:

- Southern California includes the counties of Kern, San Bernardino, San Luis Obispo, and all counties to the south of these counties;
- Northern California includes all other counties of the state; and
- "Rural" is defined to be consistent with the definition used by the Tax Credit Allocation Committee (TCAC) for the tax credit program. A list of Rural areas, as well as the methodology to determine Rural or Non-Rural status, can be found on TCAC's website at <https://www.treasurer.ca.gov/ctcac>

Section 309. Technical Assistance

Few nonprofits have significant experience in acquisition and rehabilitation of small properties for long-term affordable housing. The Department will contract with a technical assistance (TA) provider to support nonprofits in implementing FIHPP. The TA provider will provide a variety of services to QNPs and CBNPs such as:

- Access to data on FIHPP-eligible properties
- Legal assistance
- Peer learning opportunities
- One-on-one technical assistance from experts on a variety of topics related to acquiring, rehabilitating, and managing small properties as affordable housing, including property assessment and due diligence, and developing budgets and pro formas

ARTICLE IV. APPLICATION PROCEDURES

Section 400. Application Process

Section 400.1 Nonprofit Qualification Applications

The AFM will be responsible for creating and publishing an application form for nonprofits to apply to become QNPs and CBNPs, pursuant to these guidelines. Nonprofits will submit their applications to the AFM, who will route applications to an IFM covering the nonprofit's geographical location. The IFM will review and approve or deny the application within two weeks of receipt.

Section 400.2 Funding Applications

Each IFM will develop a detailed funding application review, approval, and fund disbursement process that is sufficient to deploy funds necessary to purchase real property in trustee's sales pursuant to the time constraints described in Civil Code section 2924m. This plan is subject to approval by the Department.

Each IFM will develop application form(s) for QNPs and CBNPs to apply for predevelopment, acquisition, and rehabilitation funding. These forms will implement their Department-approved application review process and should include any relevant lists of required documents and underwriting/budgeting requirements.

ARTICLE V. PROGRAM OPERATIONS

Section 500. Legal Documents

- (a) Upon selection, the Department will enter into a Standard Agreement with the AFM. This contract shall require the parties to comply with the requirements and provisions of these guidelines. The Standard Agreement shall contain, but not be limited to, the following:

- a. The AFM’s responsibilities for timing and completion of FIHPP program setup and key deliverables, including reporting requirements;
 - b. Manner, timing, and conditions for disbursement of FIHPP funds to the AFM;
 - c. Terms and conditions for extending the Standard Agreement beyond the initial term;
 - d. Remedies available to the Department in the event of a violation, breach, or default of the Standard Agreement;
 - e. Requirements that the AFM must permit the Department or its designated agents and employees the right to inspect all books, records, and documents maintained by the AFM in connection with FIHPP;
 - f. Terms and conditions required by federal or state law; and
 - g. Other provisions necessary to ensure compliance with the requirements of FIHPP.
- (b) For every Project loan or grant made by an IFM, the IFM shall record a Regulatory Agreement with the County recorder outlining the affordability restrictions on the project. This Regulatory Agreement shall be substantially in the form of the boilerplate Regulatory Agreement provided by the Department for FIHPP-funded Projects.
- (c) Every 55-year Project loan made by an IFM shall use a loan agreement substantially in the form of the boilerplate loan agreement provided by the Department for FIHPP-funded Projects.

Section 501. Defaults and Award Cancellations

(a) The funding commitment from the Department to the AFM may be canceled prior to the execution of the Standard Agreement by the Department under any of the following conditions:

- (1) The objectives and requirements of FIHPP cannot be met; or
- (2) Implementation of FIHPP cannot proceed in a timely fashion in accordance with the timeframes established in the Standard Agreement.

(b) In the event of a breach or violation by the AFM of any of the provisions of the Standard Agreement, the Department may give written notice to the AFM to cure the breach or violation within a period of not less than sixty (60) days. If the breach or violation is not cured to the satisfaction of the Department within the specified time period, the Department, at its option, may declare a default under the relevant document and may seek legal remedies for the default including the following:

1) The Department may seek, in a court of a competent jurisdiction, an order for specific performance of the defaulted obligation;

2) The Department may seek such other remedies as may be available under the relevant agreement or any law.

(c) Upon receipt of a notice of intent to cancel the commitment from the Department, the AFM shall have the right to appeal to the Director of the Department.

Section 502. Management, Maintenance, and Supportive Services

(a) The Sponsor shall be responsible for all management functions of the Project including selection of the tenants or homebuyers and ensuring compliance with the affordability restrictions and other provisions of these guidelines and of the Regulatory Agreement.

(b) For rental Projects, the Sponsor is responsible for all repair and maintenance functions, including ordinary and routine maintenance, replacement of capital items, and extraordinary and/or unforeseen repairs and replacement necessary to maintain the health and safety of the Project and residents. The Sponsor shall ensure maintenance of residential units, commercial space, and common areas in accordance with local health, building, and housing codes.

Section 503. Reporting

Section 503.1 Fund Manager Reporting Requirements

The AFM shall submit quarterly reports to the Department no later than 30 days after the end of each quarter until funds have been fully expended. Reports should include:

1. Distribution of FIHPP funds to IFMs
 - a. Total funding disbursed to each IFM
 - b. Current remaining FIHPP funds at each IFM
 - c. Interest earned to date on FIHPP funds by each IFM
2. List of organizations that have been certified as QNPs or CBNPs, including whether each QNP met the specific acquisition and rehabilitation experience requirements or whether the QNP was determined to be located in an area that lacks nonprofits with acquisition and rehabilitation experience and therefore only met the development experience requirements.
3. List of predevelopment loans/grants made, including:
 - a. Organization receiving funding
 - b. Type of funding (loan or grant)
 - c. Loan/grant date
 - d. Total amount of loan/grant
 - e. List of properties on which predevelopment funds were used
 - f. Amount of predevelopment funding used on each property

- g. Whether or not the property was ultimately acquired
- 4. List of acquisition/rehab loans/grants made, including:
 - a. Organization receiving funding
 - b. Type of funding (loan or grant)
 - c. Loan/grant date
 - d. Property address
 - e. Number of units
 - f. Geographic region of property, as per FIHPP guidelines
 - g. Total acquisition price for property
 - h. Total amount of loan/grant
 - i. Distribution of funds between acquisition and Rehabilitation
 - j. Whether the funding was for additional Rehabilitation needs identified post-acquisition
 - k. If the property also received a COSR, total amount of COSR
 - l. Proposed tenure for units (rental, ownership, cooperative ownership)
 - m. Income levels to be served
 - n. The expiration date of the project's affordability restrictions
 - o. After Project achieves Stabilization, add:
 - i. How much of the initial Project funding was recovered from other financing sources
 - ii. List of other financing sources, if applicable
 - iii. What was done with the recovered funds, if applicable (e.g., remained with Project as reserves, remained with Sponsor as predevelopment funds for future projects, or returned to IFM)
 - iv. Race/ethnicity of tenants served
 - v. Copy of the recorded Regulatory Agreement
- 5. Status of Capitalized Operating Subsidy Reserves (COSRs), including:
 - a. Organization receiving COSR
 - b. Property address for property receiving COSR
 - c. Date of COSR inception
 - d. Length (number of years) of COSR
 - e. Total amount of initial COSR
 - f. Amount of COSR remaining as of this report
- 6. List of any properties acquired with FIHPP funds that have been sold or transferred to another owner, including:
 - a. Property address
 - b. Name of former owner
 - c. Name of new owner
 - d. Purchase price if applicable
- 7. Progress towards the income and geographic equity targets described in the FIHPP guidelines.
- 8. Narrative description of program progress, including any challenges identified in program execution and/or recommendations for program changes.

IFMs shall provide necessary information to the AFM to complete the quarterly reports upon request.

Section 503.2 Sponsor Reporting Requirements

Before the Project achieves Stabilization, Sponsors shall provide necessary information to Fund Managers to complete the quarterly reports upon request.

After the Project has achieved Stabilization and any remaining FIHPP funds have been converted to long-term gap financing, Sponsors shall provide reports to the Department as outlined in the Regulatory Agreement.

Section 504. Program Assessment

After the first \$100 million of funding has been distributed, the Department will work with Fund Managers, technical assistance providers and nonprofits to assess how the Program has been working and whether changes to the guidelines are needed to best achieve the Program goals.

APPENDIX A – FIHPP DEFINED TERMS

Administering Fund Manager or AFM – a Fund Manager with whom the Department contracts directly to manage the Program. The Administering Fund Manager will subcontract with a team of Implementing Fund Managers.

Affordable Housing Development - a structure or set of structures with common financing, ownership, and management, and which collectively contain one or more dwelling units, including efficiency units as defined in HSC Section 50675.2, subdivision (d), where one or more Units are subject to price and/or occupancy restrictions through a Regulatory Agreement to make the Unit(s) affordable to Low Income or Moderate Income households. An Affordable Housing Development includes, without limitation, the real property, the improvements located thereon, and all fixtures and appurtenances related thereto.

Applicant - an entity or entities applying to become a QNP or CBNP or for Program funding. Such entity or entities may also be the Sponsor.

Area Median Income or AMI - means the most recent applicable county median family income published by California Tax Credit Allocation Committee (TCAC).

Assisted Unit - a housing Unit that is subject to price and/or occupancy restrictions as a result of financial assistance provided under the Program.

Capitalized Operating Subsidy Reserve or COSR - a reserve established by the Administering Fund Manager or their designated agent pursuant to the requirements of Section 304 to address Project operating deficits attributable to Assisted Units.

Community-Based Non-Profit or CBNP – an organization that meets the qualification requirements for Community-Based Non-Profits in Section 200 and that has been approved by an IFM as a Community-Based Non-Profit.

Community Land Trust or CLT – a community land trust as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

Department or HCD - the California Department of Housing and Community Development.

Extremely Low Income - households with Gross Incomes not exceeding 30 percent of Area Median Income as set forth in Health and Safety Code section 50106.

Fund Manager - a nonprofit lender with experience making real estate loans in this state, or a housing trust fund operated by a city, a county, a city and county, or a joint powers authority as described in Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code operated for the purpose of funding the

development, acquisition, rehabilitation, or preservation of affordable housing for low- or moderate-income residents.

Gross Income - all income as defined in CCR Title 25 Section 6914.

HUD - the U.S. Department of Housing and Urban Development.

Implementing Fund Manager or IFM - a Fund Manager with whom the Administering Fund Manager subcontracts to implement the qualification process for prospective QNPs and CBNPs, develop funding application forms for Project Sponsors to apply for funding, review and approve funding applications, and make loans and grants pursuant to these guidelines. IFMs will also oversee the Project through Stabilization, including disbursing Rehabilitation funds in accordance with the funding agreement.

Lower Income or Low-Income - households with Gross Incomes not exceeding 80 percent of Area Median Income as set forth in Health and Safety Code Section 50079.5.

Moderate Income - households with Gross Incomes not exceeding 120 percent of Area Median Income as set forth in Health and Safety Code Section 50093.

Partnership - an association of two or more persons or entities who combine their property, skill, or knowledge to carry out a single business enterprise for profit.

Program – the Foreclosure Intervention Housing Preservation Program.

Project - an Affordable Housing Development for which funding is being requested, 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.

Qualified Non-Profit or QNP – an organization that meets the qualification requirements for Qualified Non-Profits in Section 200 and that has been approved by an IFM as a Qualified Non-Profit.

Regulatory Agreement - a written agreement recorded on an Affordable Housing Development to control the use and maintenance of the Project, including restricting the price and occupancy of the Assisted Units.

Rehabilitation - the term as defined in HSC Section 50096, including improvements and repairs made to a residential structure acquired for the purpose of preserving its affordability.

Rent - the same as “gross rent,” as defined in accordance with the Internal Revenue Code (IRC) (26 USC 42(g)(2)(B)). It includes all mandatory charges, other than deposits paid by the tenant, for use and occupancy of an Assisted Unit, plus a utility allowance established in accordance with TCAC regulations, if applicable. For units assisted under the Housing Choice Voucher (HCV) or similar rental or operating subsidy program, rent includes only the tenant contribution portion of the contract rent.

Sponsor - any organization that meets the qualifications in Section 201 and has been approved by an IFM as a Qualified Non-Profit or Community-Based Non-Profit to apply for Program funds.

Stabilization – Rehabilitation is complete, income levels of current tenants have been identified if needed, and the Project is ready to refinance if applicable or, in the case of homeownership projects, sell to a homebuyer.

TCAC - the California Tax Credit Allocation Committee.

Unit - has the same definition as UMR Section 8301(x).

Very Low Income - households with Gross Incomes not exceeding 50 percent of Area Median Income as set forth in HSC Section 50105.