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Sent via email to mhp@hcd.ca.gov and SuperNOFA@hcd.ca.gov

Multifamily Housing Program
Department of Housing & Community Development
2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833

RE: Comments on 2022 MHP Draft Guidelines and Appendix A – Consolidated Scoring Appendix

Dear Multifamily Housing Program:

Disability Rights California (DRC) is a non-profit organization that advocates for the rights of people with disabilities. We are the largest disability rights organization in the country, and we are California's designated Protection and Advocacy agency. Joined by the organizations who have co-signed this letter, we submit these comments on the 2022 MHP draft guidelines for AB 434 implementation. Our comments focus primarily on how the draft guidelines will affect people with disabilities. We have submitted condensed comments through the online portal but, due to the complexity of our comments, we submit this letter as well to explain fully the condensed comments submitted online.

We greatly appreciate all the hard work and effort that went into this challenging undertaking to coordinate existing programs. Thank you for the opportunity to comment.

I. Overview of our public comments

We thank you for your attention to our prior comments on accessibility and fair housing. We are especially pleased to see that the guidelines require a minimum of 15% of units in new construction projects be accessible to people with mobility disabilities and 10% be accessible to people with sensory disabilities. HCD's adoption of these standards is a critical step to addressing the lack of accessible, affordable housing in California.

We are also pleased to see that deeper targeting for lower income households has gotten more weight, as reflected in the Draft Consolidated Scoring Appendix. These households often struggle the most to find housing. We particularly appreciate the targeting in counties with high AMIs. We also appreciate that units with deep targeting must be distributed proportionately across all unit sizes or larger units. Our comments on the other aspects of the Consolidated Scoring Appendix are in Attachment A of this letter.

We also appreciate HCD's decision to include some of our suggested language in Section 7314¹ on state and federal laws. However, this section remains incomplete. It mistakes the law in some places and omits critical legal requirements in others. We describe these omissions below and have included suggested revised language on this and other sections of the guidelines.

Lastly, we appreciate that the guidelines now include a definition for "Affirmatively Furthering Fair Housing" (AFFH), but we were surprised to not see the term used anywhere in the guidelines. Defining AFFH is an essential first step towards dismantling systemic and structural inequality in housing, but Sponsors will need more guidance than just a definition to meet their obligations. HCD should expressly incorporate AFFH throughout the guidelines to help Sponsors understand what is expected of them. We have made suggestions in this letter on where AFFH should be discussed, which we hope HCD finds helpful. We also hope HCD recognizes that most, if not all, of the comments made in this letter align with specific recommendations and action steps HCD identified in its 2020 Analysis of Impediments to address Impediment #10: Insufficient Accessible Housing Stock. We hope that

¹ This refers to the section titled "State and Federal Laws, Rules, Guidelines and Regulations." It is correctly numbered Section 7314 in the Table of Contents to the guidelines but mis-numbered Section 7315 in the body of the guidelines.

HCD will use AB 434's alignment process to bring its programs into conformity with one another and into compliance with state and federal fair housing laws.

Our comments are organized sequentially to mirror the order of the sections in the MHP guidelines. Due to the length of our comments, we have included this Overview section to highlight the major recurring themes of our comments.

A. Clarification of key disability and accessibility concepts

Many of the suggestions in this comment letter require a nuanced understanding of disability and accessibility. The following is a list of key concepts that form the guiding principles of our comments.

1. Accessible Housing Units (i.e., Units with Mobility or Sensory Features)

Housing units with mobility or sensory (hearing/vision) features are known collectively as accessible housing units. They have special features that assist people who have specific physical disabilities: those with mobility disabilities and those who are Deaf/Hard of Hearing or Blind/Low Vision. Many people with mobility and/or sensory disabilities do NOT need housing with supportive services and do not fall into the category of individuals with special needs. They live independently, or with minimal help, so long as they have a unit that meets their mobility or sensory needs.

2. People with disabilities who do NOT need Accessible Housing Units or Supportive Housing

Not all individuals with disabilities need supportive housing or accessible units. Many people with mental, physical, and other disabilities can live in independent, non-accessible units without supportive services. They may not need any assistance, or may only require simple fixes such as a unit without stairs, a minor change in policy, or auxiliary aids and services for effective communication (e.g., Braille, large print, or use of video relay services). For these individuals, the provision of reasonable accommodations, reasonable modifications, and auxiliary aids/services for effective communication (all of which are required by law and are addressed below) are sufficient to maintain housing stability.

3. People who need supportive housing services and who are included in Special Needs Populations.

Some people with severe disabilities or certain types of disabilities need supportive housing services in order to obtain or maintain housing and avoid homelessness or institutionalization. A range of supportive housing services tailored to their needs helps them to stabilize their housing situation. The level of services they need may vary over time. Some of them may also need accessible units (e.g., someone who needs supportive housing services and also uses a wheelchair), but many will not. There are other individuals *without disabilities* who may also need supportive housing services, such as domestic violence survivors and youth facing homelessness.

It is important to use clear language and property-tailored programs when discussing these various groups, because they have different and distinct needs. We have proposed language in the definition sections, and various other sections, to clarify the different objectives and services.

4. Integration and Segregation

As discussed more fully below, the issues of segregation are distinct from the distribution of accessible units, although they are related. Individuals who need accessible housing units do not want to be lumped together on one floor or in one area of a building, and some families with individuals with disabilities may require multiple bedrooms. Therefore, accessible housing units must be dispersed throughout the project and available in a range of sizes and amenities. (See 24 C.F.R. Section 8.26.) This addresses one specific type of segregation.

However, integration and non-segregation requirements are much broader than the distribution of accessible housing units in a project. Integration requires that individuals with all types of disabilities are offered opportunities to live with people who do not have disabilities. Policies that concentrate people with disabilities in buildings where everyone else has a disability deny people with disabilities the opportunity to interact with people who do not have disabilities. HCD would never require or allow a building to be occupied only by people of one race or ethnic background; that is commonly understood to be segregation. But the minimum 45% occupancy restrictions for Special Needs Populations that are composed of people

with disabilities (e.g., Chronically Homeless, who by definition have disabilities), do exactly that: They require individuals with disabilities to live in projects where most or all of the other occupants also have disabilities. This is further exacerbated by the fact that there are no caps on the number of Restricted Units, so many buildings are 100% occupied by people with disabilities.

B. Ongoing issues regarding accessibility and fair housing

We are concerned that the 2022 draft guidelines continue to include many problems that we have raised in prior comment letters, most notably:

- The guidelines still fail to include specificity requiring compliance with all applicable state and federal laws on architectural accessibility (See comments below on Sections 7302, 7314², 7316, 7320, 7321, 7324, and 7325);
- The guidelines still require a high minimum percentage of restricted units with no real cap which, as applied to people with disabilities, creates the risk of segregation in violation of federal and state fair housing and disability laws and the Olmstead requirement³ (See comments below on Section 7302, subsections (e)(2)⁴ and (f));
- The guidelines continue to lack specificity about, and still fail to require explicit compliance with, tenants' rights and fair housing laws that should apply to all Sponsors (See comments below on Sections 7314⁵, 7321, 7324, and 7325);
- The guidelines still fail to require recordkeeping and reporting on the marketing and utilization of accessible units, which will make monitoring

² Id.

³ The American with Disabilities Act and Section 504 of the Rehabilitation Act require governments to provide services to people with disabilities in the least restrictive and most integrated setting possible. This is often referred to as the "Olmstead" obligation, after the U.S. Supreme Court case implementing the requirement. See *Olmstead, et. al. v. L.C., et. al.* 527 U.S. 581 (1999); 28 C.F.R. Section 35.130(d).

⁴ Section 7302 contains two subsections labeled (e). We have comments on both, but this reference is to the first subsection (e).

⁵ This refers to the section titled "State and Federal Laws, Rules, Guidelines and Regulations." It is correctly numbered Section 7314 in the Table of Contents to the guidelines but mis-numbered Section 7315 in the body of the guidelines.

for compliance by HCD extremely difficult, and will make it difficult for HCD to establish its compliance with the law if audited by HUD (See comments below on Sections 7321, 7324, and 7325); and

- The guidelines still include inaccurate and problematic definitions of key terms, including “Homelessness,” “Disabled Populations,” “Intellectual Disability,” and “Special Needs Population(s)” to name a few (See comments below on Section 7301).

As discussed above, while there is overlap between “disability” and “special needs,” these are two distinct concepts, and their definitions in the guidelines should reflect those distinctions. Some people with disabilities require supportive services to maintain housing stability, qualifying them as “special needs populations,” while others require only an accessible housing unit but not supportive services. Others require neither supportive services nor an accessible housing unit, but may need reasonable accommodations, reasonable modifications, or auxiliary aids/services for effective communication. The unique needs of each of these groups is lost in the inaccurate definitions of key terms in the guidelines. Those inaccurate definitions create further confusion about special needs projects, integration requirements, and supportive housing. (See our comments on Sections 7301(y), (vvv) and Sections 7302(e)(2) and (f).)

C. Supportive services and supportive housing

In addition to the recurring issues discussed above, the 2022 MHP guidelines also present a new problem: the elimination of supportive housing as a program type and the revision of Special Needs Projects. The result is a confused set of guidelines that seem to still require the provision of supportive services, but does not define them or make clear when that requirement is imposed. (See our comments below on Sections 7301, 7302, and 7310.) The proposed guidelines, in combination with Appendix A, also contain disincentives for serving people with disabilities and are structured in a way that raise concerns that older adults and people with disabilities will be unable to access housing with supportive services, as set out in further detail in Attachment A.

D. Scoring

The new scoring criteria weighs points heavily towards serving the lowest income levels—an approach we support. But the criteria in II(b)(2), in combination with certain definitions, also weighs heavily towards projects serving only Homeless households filled through CES, to the point where it is virtually impossible to be competitive serving any other populations. We agree that providing housing to the Homeless is vital to addressing the state’s homelessness crisis. But, as noted below, the CES system contains significant barriers to serving homeless individuals (particularly those with disabilities and in institutions). There are many other populations who are at risk of homelessness and will become chronically homeless themselves if they are unable to access stable housing that is affordable and suited to their needs. We urge HCD to reconsider the structure and allocation of points in its scoring criteria, in conjunction with our other comments, so that projects serving at-risk populations can be competitive for funding.

E. Drafting errors

We recognize the complexity and time constraints of these guidelines that make drafting errors inevitable. In order to facilitate further review, we note some of the issues here.

Several sections are misnumbered, including:

- Section 7302 contains two different subsections both labeled (e).
- “Threshold Requirements” is identified as Section 7303.1 in the Table of Contents but appears as Section 7302.1 in the body of the guidelines.
- The section on State and Federal Laws is numbered 7314 in the Table of Contents but 7315 in the body of the guidelines.
- There are two sections numbered 7321 (Performance Deadlines and Legal Documents), which throws off the numbering for all of the sections that follow.
- The Table of Contents marks Section 7310 as [Reserved], but the body of the guidelines contain the MHP Supportive Service Plan Requirements at that section number. Conversely, the Table of Contents lists Section 7326 as “Supportive Services Plans,” but that section is missing from the body of the guidelines.

Although we have assumed that the accurate numbers are those in the table of contents, all references in this letter are to the section numbers in the body of the guidelines as first posted.

Many of our comments below pertain to Section 7301 (Definitions), which had formatting and substantive issues. One problem is that all of the terms related to income levels (Low Income, Lower Income, Very Low Income, and Extremely Low Income) have the same definition, which we assume is a copy-and-paste mistake. There are also terms in the Definitions section that do not appear in the body of the guidelines (e.g., Affirmatively Furthering Fair Housing) and capitalized terms used in the body of the guidelines that are not defined in the Definitions section (e.g., Supportive Services).

Also, the MPH guidelines say that “language identified in red text throughout this document represents text that is consistent across all multifamily funding programs subject to AB 434.” But as we reviewed the different sets of guidelines, we noticed a number of instances where red text was omitted or modified, leaving us uncertain as to whether the omissions and modifications were intentional or drafting errors. For example, the first paragraph of Section 7303(d) appears in red in the MHP guidelines but is different in the VHHP guidelines. (See our comment letter on the VHHP guidelines for a list of other inconsistencies.)

We elaborate on these issues in the comments below and urge HCD to conduct a thorough proofread of the guidelines before publishing the revised version.

F. Lack of public participation

The public comment period for the AB 434 implementation guidelines was surprisingly short. We appreciate that HCD extended the comment period by 5 days. But, even with that extension, the public only received 17 working days over the holiday season to comment on over 200 pages of draft regulations that contain significant substantive changes. Insufficient time to review and comment on regulations is a barrier to public participation, particularly for individuals with disabilities. For this reason, and all the reasons above, we urge HCD to issue another draft, with sufficient opportunity for comment, prior to finalization of the new guidelines. In the future, we ask that you provide 30 days—more if necessary to account for holidays—to comment on draft guidelines that include substantive changes from the previous version.

Furthermore, we understand the HCD made a concerted effort to consult with stakeholders during the drafting process. Unfortunately, it is our understanding that representatives of the tenant and disability communities—the residents of these future projects—were not included in that process. We appreciate that we have re-opened our dialogue with HCD recently. We request that HCD routinely include us and our colleagues in future stakeholder consultations.

The remainder of this letter discusses the issues raised above as they apply to specific sections of the guidelines. We reiterate our appreciation to HCD for its ongoing efforts to receive input from and respond to community concerns. We look forward to continuing to work with the Department on policies that promote the development of affordable, accessible housing for the communities we serve.

II. Article I. General

A. Section 7300. Purpose and Scope

Subsection (a) states that the guidelines implement the portions of the Health and Safety Code (HSC) that establish the Multifamily Housing Program (MHP). The guidelines reference the HSC and the Uniform Multifamily Regulations (UMR) throughout the body of the text, but make no mention of the MHP regulations at 25 C.C.R. 7300 et seq. As HCD has no legal authority to repeal the MHP regulations without following the appropriate California Administrative Procedures Act provision, those regulations are still in effect. HCD should revise the guidelines to expressly reference the MHP regulations and, where there are conflicts between the regulations and proposed guidelines, should bring the guidelines into compliance with the regulations. There is a significant conflict between the guidelines and the regulations on the definition of “Special Needs Populations,” which we discuss below in our comments on Section 7301(vvv).

B. Section 7300.1. Uniform Multifamily Regulations (UMR)

The 2022 draft guidelines continue to incorporate the UMR by reference but then state that the program guidelines will prevail in the event of a conflict between the UMR and the MHP guidelines. We reiterate our prior

comment that HCD does not have the authority under the state Administrative Procedures Act (APA) to override existing regulations that have been neither amended nor repealed. (See APA procedures for amending or repealing regulations at 11340.6-11340.7.) MHP regulation 25 C.C.R. 7300.1(a) expressly incorporates the UMR into the MHP regulations. In the event of a conflict between the UMR and the MHP regulations, it is the MHP regulations—not the guidelines—that control. (25 C.C.R. section 7300.1(b).) If HCD believes otherwise, we respectfully request an explanation of its position in a stakeholder memo.

C. Section 7301. Definitions

Some of HCD's definitions conflict with applicable statutes and regulations. (See e.g., subsection (jj) on Housing First.) As discussed above, HCD cannot use guidelines to override statutes or regulations. HCD can expand the definitions of key terms to better serve communities, but the guidelines cannot directly conflict with statutes or regulations.

We note that the many of the definitions are confusing, given conflicting definitions of the same term in different guidelines and the need to refer back to both the statute and UMR to fully understand a term. We recommend that any terms be fully defined in the MHP guidelines, with minimal cross-references, and that definitions be consistent with statutory and regulatory terms. Many of the definitions are ambiguous, or legally problematic. See more detailed comments below.

Lastly, as a global comment, many of the definitions in the guidelines are restatements of statutory or regulatory definitions but do not cite to the source definition and do not explain the reason for deviations in the stakeholder memo. This approach makes it difficult for the public to understand where the definitions come from and why they deviate from the statutory or regulatory source. For example, the definition of "Transitional Housing" in subsection (bbbb) seems to blend language from multiple statutes into one definition that may be internally inconsistent (see our comments below). Similarly, the definition of "Rental Housing Development" in subsection (lll) appears to be a blend of definitions from the HSC, the UMR, and other unidentified language. HCD can increase the clarity of its guidelines by including a citation when a definition is taken from another source (and then reflecting the cited language verbatim) and, when a definition deviates from the source, signaling the deviation in the

guidelines and explaining the reason for it in the accompanying stakeholder memo.

1. Subsection (b) “Affirmatively Furthering Fair Housing” (“AFFH”)

We appreciate the inclusion of this very important concept in the definition section. Compliance with AFFH is very important for HCD and for the programs it funds. It would be useful to incorporate this term into the specific obligations of the guidelines. Many of our comments throughout the document reference the requirement for HCD to comply with AFFH obligations. The guidelines should reflect HCD’s commitment to AFFH by expressly incorporating them into key sections, like Section 7314 (State and Federal Laws, Rules, Guidelines and Regulations); Section 7318 (Application Content and Application Eligibility Requirements); Section 7322 (Legal Documents); Section 7325 (Management and Maintenance); and Section 7327 (Reporting Requirements).

2. Subsection (i) “Area Median Income” or “AMI”

We are puzzled by the conflicting definitions contained within the guidelines. This subsection defines AMI in reference to TCAC standards, reflecting the definition from the MHP regulations (25 C.C.R. 7301(b)). But the other income definitions (Extremely Low Income, Very Low Income, Low Income, and Lower Income) refer to statutory standards that rely on HUD standards for these categories. Please clarify.

3. Subsection (r) “Chronic Homelessness”

This definition begins with language verbatim from the cited federal regulation (24 C.F.R. 578.3), followed by additional language from HCD to capture an expanded group of people excluded from the federal definition. We appreciate HCD’s decision to expand coverage through the guidelines. For clarity, we recommend that HCD re-format the definition to make it clear where the regulatory language ends and where HCD’s additional language begins (i.e., the sentence beginning “It also includes...” in subsection (3) should be the start of a new paragraph.).

But even with HCD's expanded coverage, there are many people who are unhoused who still do not meet the definition of "Chronic Homelessness" under the guidelines. Specifically, the expanded definition still fails to capture people who have been in an institution for longer than 90 days, people who were housed before entering an institution but lost their housing thereafter, and people who cycle in and out institutions (e.g., people with mental health disabilities who cycle among mental health facilities, hospitals, psychiatric hospitals, homeless shelters, and jails, with or without varying periods of time on the street). This population—people who have been institutionalized—have critical unmet housing needs. In DRC's work on prison re-entry issues, our community partners consistently report that lack of stable housing upon release remains one of the biggest barriers to successful re-entry and avoidance of re-institutionalization. And, HCD recognized in its 2020 Analysis of Impediments that this population faces significant housing barriers and committed (as an action step under Impediment #10) to evaluate its programs to better serve people transitioning from institutional to community-based settings.

HCD can reduce the administrative barriers to serving people in institutions by combining the HUD and MHP definitions of "Homeless," "Chronically Homeless," and "At Risk of Homelessness" into a single, inclusive category. It is especially important to include "At Risk of Homelessness" in the definition because that is the only term that adequately captures all people exiting institutions. HCD's program definitions must encompass all individuals who:

- (a) meet the definition of "Homeless," "Chronically Homeless," or "At Risk of Homelessness" as those terms are defined in 24 C.F.R. 578.3; or
- (b) reside in transitional housing;
- (c) reside in a development undergoing Rehabilitation with MHP funds or being replaced by a MHP-funded project; or
- (d) people who are at risk of institutionalization.

Creating a single category will also reduce the burden on housing and service providers, who have to spend considerable amounts of time determining which of the many categories a particular unhoused person fits into for the purpose of receiving services. The high level of specificity in each of the current definitions also means that unhoused people who need

and should receive services may be screened out based on minor technicalities.

If HCD must maintain multiple categories of unhoused people (to comply with HUD requirements, for example), then we recommend HCD at least revise the definition of “Chronically Homeless” to include people exiting institutions (regardless of their housing status upon entering the institution) and people at risk of institutionalization.

4. Subsection (t) “Community-Based Developer”

We support the concept of a Community-Based Developer category to expand and diversify the developer community. However, the requirement that they have been “located and operating exclusively from or primarily in a Low or Moderate Resource or High Segregation Community” excludes organizations who focus on serving particular populations of people with disabilities or special needs populations, and have extensive experience working with such communities, but are not located in a specific geographic area, or serve multiple segregated or low resource areas. We recommend adding an alternative qualifying option: “Entities that have at least three (3) years of experience in the delivery of culturally and disability competent services to low- or lower-income households in particular special needs communities, such as people with disabilities who need supportive services.”

We also recommend that you revise the definition of “culturally competent services” as follows [suggested new language is in [blue](#)]:

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, [abilities, disabilities](#), beliefs, attitudes and behaviors.”

These changes should be reflected also in the definition of “New Community-Based Developer.”

5. Subsection (v) “Coordinated Entry System” or “CES”

We are concerned about a definition that, on its face, does not apply to most CES programs. In our experience, almost no CES system “is easily accessed by individuals and families seeking housing or services.” Nor do any of them have “a comprehensive and standardized assessment tool” in compliance with the law, since, with the possible exception of the City of LA under the *ILCSC v. LA* settlement, none of them assess for disability needs for units with accessible features, nor do they prioritize units with accessible features for those who need them, in clear violation of the law. See our further comments below on CES. If this definition is maintained, properties should be exempt from using systems that are not in compliance with the definition and from using systems that do not comply with federal requirements on marketing and matching of accessible units.

6. Subsection (y) “Disabled Populations”

We thank HCD for responding to our previous suggestion on adopting a definition of “disability” in the guidelines. However, the draft definition of “Disabled Populations” currently excludes all the same categories of people with disabilities excluded from the definition of “Special Needs Population(s).” (See our comments below on subsection (vvv) on the populations who are excluded.) In addition, the phrasing “Disabled Populations” could be offensive to people who prefer person-first language. Further, the only time the guidelines use the term “Disabled Populations” is in Section 7302(f)(1), where it is used inappropriately. (See our comments below on Section 7302(f)).

There are important distinctions between the concepts of “disability” and “special needs populations.” “Disability,” under state and federal law, is a broad term used throughout many statutes and regulations in various contexts. It is a protected category under anti-discrimination laws (which we hope the final guidelines will reflect), and it is a part of many other definitions (such as Chronically Homeless).

“Special needs populations” is narrower in relation to the definition of “disability” and serves a different purpose. The definition is used to identify populations with significant needs for supportive services to obtain or maintain their housing or prevent institutionalization. Not all people with disabilities need supportive services or qualify as special needs

populations. Most individuals with disabilities can live completely independently without supportive services (although some may need an accessible housing unit but not services). “Special needs populations” also includes some groups of people who do not have disabilities, such as survivors of domestic violence. Therefore, it is important to clearly distinguish between the two definitions, which have different purposes and different scopes. We believe our proposed definitions accomplish this objective.

For legal and policy reasons, it is imperative that the guidelines have a broad definition of “Disability” that is consistent with state and federal law. Our proposed definition is consistent with all federal and state statutes which use the term “disability” (the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Fair Housing Act, the Fair Employment and Housing Act, the Unruh Act, the Disabled Persons Act, and Government Code section 11135). To the extent that not all individuals with disabilities may need supportive services, that can be addressed in the definition of “Special Needs Populations” or the requirements of Special Needs Projects.

We recommend that HCD replace the term “Disabled Populations” with the term “**Disability**,” defined as:

A condition that limits a major life activity, including but not limited to:

- (1) a “physical disability” as defined in Gov’t Code section 12926(m);
- (2) a “mental disability” as defined in Gov’t Code section 12926(j);
- (3) a “medical condition” as defined in Gov’t Code section 12926(i);
- (4) an Intellectual Disability as defined under Section 7301(nn) of these guidelines [*we anticipate that this will be consistent with our comments below on revisions to the definition*];
- (5) a “developmental disability” as defined under Welfare and Institutions Code section 4512(a) or under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 in 42 U.S.C. section 15002(8) [*we anticipate that this will be consistent with our comments below on revisions to the definition*];
- (6) a chronic illness, such as HIV; and
- (7) a traumatic brain injury (TBI).

In the event that it is unclear whether a condition meets any of the 7 categories listed above, the Department will apply the ADA’s rules of

construction at 28 C.F.R. 35.108, except that a condition need only “limit” (not “substantially limit”) a major life activity.” [*This caveat is necessary to reflect California’s more inclusive standard of disability as compared to the federal standard.*]

This proposed definition of “Disability” is consistent with state and federal law and encompasses key populations excluded from the current definition of “Disabled Populations”, such as people exiting institutions who have a disability other than a physical or sensory condition (e.g., a mental health disability).

We recommend expressly including Traumatic Brain Injury (TBI) as a covered disability because, as a physical condition that causes mental effects, it sometimes slips between the cracks of statutory categorizations. For example, people with TBI may have needs similar to a person with an intellectual or developmental disability, but would be ineligible for services under the Lanterman Act if the injury occurred after the age of 18. There is an incredibly high prevalence of TBIs among the unhoused population, with some studies finding that as many as half of all unhoused people have a TBI.⁶ Expressly including TBIs in the definition of disability will help target assistance to unhoused people with disabilities whose needs are often overlooked by service delivery systems.

Lastly, we note that our proposed changes to this definition would align MHP’s definition with VHHP’s definition of “Veterans with a Disability Experiencing Homelessness.” The VHHP definition cites to 42 U.S.C. 11360, where “homeless individual with a disability” expressly includes people with a brain injury and people with developmental disabilities.

7. Subsection (z) “Efficiency Unit”

See comments under Subsection (ooo) “Residential Hotel Unit.”

⁶ “Half of all homeless people may have had traumatic brain injury,” *The Guardian* (available at: <https://www.theguardian.com/society/2019/dec/02/half-of-all-homeless-people-may-have-had-traumatic-brain-injury>) (summarizing multiple studies from different countries on the prevalence of TBI among unhoused populations).

8. Subsection (aa) “Eligible Households”

We appreciate that the MHP program restricts eligibility to households whose incomes do not exceed 60% of AMI. To better target assistance to where it is needed most, we urge HCD to adopt this income eligibility cap (or a lower cap) in its other programs where feasible.

We also appreciate that the Consolidated Scoring Appendix targets the lowest income levels. But to fully meet the state’s housing needs, deep targeting must be a requirement, not just a scoring criterion. Targeting assistance at the 60% AMI level still leaves a substantial portion of the population unable to afford housing. For people with disabilities on SSI (which was about 20% of Californians with disabilities in 2018),⁷ the SSI payment rate places them at an income level of 11%-23% AMI depending on their location.⁸ We acknowledge that projects will likely need a mix of income levels to be financially feasible. We recommend that HCD require some level of deep targeting at 25% AMI to meet the needs of those who cannot afford market rate housing in any jurisdiction.

Additionally, the reference to 25 C.C.R. sections 2510 *et seq* in the guidelines appears to be an error. That citation pertains to storage cabinets, which is not relevant here. Please correct the citation to the appropriate regulation.

9. Subsection (dd) “Extremely Low Income”

This definition appears to be correct for this term, but the identical definition is used for the terms “Low Income” (subsection tt), “Lower Income” (subsection uu), and “Very Low Income” (subsection hhhh). We assume this is a copy-and-paste error and have noted the correct standards in our comments below.

⁷ Disability Statistics, Cornell University (available at: <https://disabilitystatistics.org/reports/acs.cfm?statistic=8>).

⁸ See HCD Memo on State Income Limits for 2021, Section 6932 (available at: <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2021.pdf>). County AMIs for a single-person household range from \$49,500 at the lowest to \$105,900 at the highest. This places SSI recipients at an AMI of 11% to 23% depending on their county of residence.

To facilitate deeper targeting, we encourage HCD to develop categories and definitions for households at even lower income levels. As discussed above, households who rely on SSI may have incomes as low as 11% AMI depending on their location. Individuals who rely on cash aid or have no income at all would be at even lower income levels. These households would meet the new income category of “Acutely Low Income” (set at 15%) created by AB 1043 and effective January 1, 2022 (See HSC section 50063.5). HCD should explore ways to target assistance to this new income category.

10. Subsection (gg) “Frail Elderly”

The term “frail elderly” is outdated, offensive to many, and medically inapt, since “frail” has specific medical diagnostic criteria that do not apply to most of the individuals HCD is attempting to cover in this subsection.⁹ The term does not accurately capture the older adult population that needs supportive services to live in a community setting. We suggest replacing it with person-first language that is more descriptive: “Older Adults in Need of Supportive Services.” The definition should clarify that this means individuals age 50+ who meet the criteria currently listed at (1) – (3), and should also include the populations described below. These changes are needed to align with both the [California Master Plan for Aging’s Goal One: Housing for All Ages and Stages](#), and the revamping of state health care programs and waivers, particularly through the new CalAIM program, to provide integrated health and housing supports to promote aging in place for all Californians.

This definition continues to exclude many older individuals who need supportive services to avoid homelessness or institutionalization, but who are served by or are eligible for other state programs, including older adults with intellectual/developmental disabilities served by the Department of Developmental Services and the Regional Center System, and the elderly served under programs of the Department of Mental Health. It also excludes: (1) senior veterans who have similar needs but are served

⁹ The only known use of the phrase “frail elderly” in California healthcare systems is in the Multipurpose Senior Services Program (MSPP), a Medi-Cal waiver program that is limited to Medi-Cal eligible individuals who are 65 years or older, disabled and need nursing facility level of care. Many older adults with disabilities are served by a range of programs that are needed to maintain their housing and keep them from becoming more severely disabled.

through the VA; (2) individuals with similar needs served by other Medi-Cal waiver programs (Whole Person Care, MSPP, CBAS); and (3) new services, including housing-related services, coming on-line through California's newly approved Home and Community-Based Services spending plan and CalAIM overhaul. HCD should revise this definition to capture all seniors with disabilities that put them at risk of homelessness or institutionalization without supportive services, including a more complete list of the relevant programs, as well as including older adults at risk of institutionalization and eligible for long-term care.

We also note that individuals who receive In-Home Supportive Services (IHSS) are, by definition, individuals at risk of institutionalization or homelessness. According to CDSS, "IHSS is considered an alternative to out-of-home care, such as nursing homes or board and care facilities."¹⁰ See also W.I.C. section 12300:

"(a) The purpose of this article is to provide [...] those supportive services identified in this section to aged, blind, or disabled persons [...] who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided."

Therefore, it is not appropriate to limit this group to only individuals receiving more than 20 hours of IHSS.

We note again that a broad definition of Special Needs Population(s), including Older Adults in Need of Supportive Services, provides the most flexibility for developers to design projects that serve a wide range of individuals who are at risk of homelessness or institutionalization.

We propose the following replacement for subdivision (gg):

"Older Adults in Need of Supportive Services" means individuals who are age 50 or older and who need Supportive Services to maintain and stabilize their housing, including individuals meeting the following criteria:

¹⁰ In-Home Supportive Services (IHSS) Program, California Department of Social Services (available at: <https://www.cdss.ca.gov/in-home-supportive-services>).

- (1) Eligible under Medi-Cal 1915(c) waiver programs including the Home and Community Based Alternatives Waiver, the Multipurpose Senior Services Program (MSSP), the AIDS Waiver, the Assisted Living Waiver, the Home and Community-Based Services for the Developmentally Disabled (HCBS-DD) Waiver, and the Self-Determination Program (SDP) Waiver;
- (2) Eligible for services under the Program of All-Inclusive Care for the Elderly or Community-Based Adult Services (CBAS);
- (3) Eligible for services through Enhanced Care Management or Community Supports (also known as “In Lieu of Services”) provided through Cal-AIM or similar programs;
- (4) Eligible for services through the In-Home Supportive Services Program;
- (5) Eligible for services similar to those listed in (1)-(4) above through DDS or the Regional Centers, including Independent Living Services and Supported Living Services;
- (6) Older veterans who need services similar to those listed in (1)-(5) above but are served through the VA; and/or
- (7) Older adults at risk of institutionalization and eligible for long term care.

Eligibility for these programs must be established by the agency responsible for determining eligibility for the benefits provided by them.

11. Subsection (ii) “Homeless” or “Homelessness”

See our comment above on subsection (r) “Chronic Homelessness.” To summarize, HCD should revise its definitions to include people who are currently excluded from the federal definitions, such as people exiting institutions who were not homeless upon entry into the institution and people at risk of institutionalization.

12. Subsection (jj) “Housing First”

Our understanding of subsection (jj) is that it adopts the definition of “Housing First” from WIC section 8255, as amended by AB 1220 (effective January 1, 2022). We strongly support and thank HCD for incorporating WIC section 8255’s “Housing First” principles into its program guidelines, as required by WIC section 8256. But there is inconsistency between the

definition of “Housing First” in Section 7301(jj) of the guidelines and how it is used in Section 7302 (Eligible Project) as a requirement for Special Needs projects. As written, Section 7302(e)(4) essentially functions as a modification of the definition at Section 7301(jj). We think this modification is inappropriate and undermines the essence of the Housing First approach. See our comments below on Section 7302 for a detailed explanation of how Section 7302 conflicts with statutory requirements.

To maintain internal consistency within the guidelines and ensure the guidelines conform to statutory requirements, we recommend that HCD revise Section 7302(e)(4) to conform to Section 7301(jj), which reflects WIC 8255 as amended by AB 1220. The guidelines must also require that all Special Needs Projects—not just those serving the Chronically Homeless—comply with WIC’s core components of Housing First as required by WIC section 8255 (requiring compliance in all state-funded housing programs serving people experiencing homelessness or at risk of homelessness).

13. Subsection (nn) “Intellectual Disabilities”

We appreciate MHP’s inclusion of this term in Section 7301, but it needs amendment to be fully inclusive. Section 7301 should also include definitions for related terms like developmental disability. These definitions are core parts of the definitions of “Disabled Populations” and “Special Needs Populations;” it is critical that the definitions be accurate and inclusive so that *all* individuals with these disabilities can obtain appropriate housing with supportive services.

We interpret the definition in subsection (nn) to be an attempt to define “intellectual disability” as it is used in WIC section 4512(a)(1). In that statute, the term “intellectual disability” replaces the outdated and offensive term “mental retardation,” which is a type of developmental disability that entitles a person to services under the Lanterman Act through the Department of Developmental Services (DDS) and the Regional Center system. But as used in the MHP guidelines, it is unclear who “intellectual disability” is intended to cover. Does it only cover individuals who receive Lanterman Act services for an “intellectual disability” under WIC section 4512(a)(1)? If so, why do the guidelines exclude people with other types of developmental disabilities covered by WIC 4512(a)(1)(e.g., cerebral palsy, epilepsy, and autism)? Does it cover individuals with cognitive disabilities

regardless of their eligibility for Lanterman Act services? If so, why do the guidelines require that the disability originate before the age of 18?

We acknowledge that the cut-off at 18 years of age is consistent with WIC section 4512(a)(1), but it is inconsistent with the federal cut-off of 22 years of age, and neither age cut-off is in the current professional standard of diagnostic criteria as reflected in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

To address all of these issues, we recommend that HCD:

1. Revise the definition of “Intellectual Disability” to require either significant limitations in intellectual functioning or significant limitations in adaptive behavior, not both, and that the disability originate before age 22, not 18;
2. Add a definition of developmental disability consistent with both state law (WIC 4512(a)) and federal law (42 U.S.C. 15002(8)); and
3. For consistency with both federal and state law, the cut-off for both definitions should be age 22, not age 18.

The revised definitions should read:

“Developmental Disability” means a severe, chronic disability that:

(1) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) manifests before the age of 22;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in 3 or more of the following areas of major life activity:

(a) self-care,

(b) receptive and expressive language,

(c) learning,

(d) mobility,

(e) self-direction,

(f) capacity for independent living, or

(g) economic self-sufficiency; and

(5) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

“Developmental Disability” expressly includes Intellectual Disability, cerebral palsy, epilepsy, and autism spectrum disorder. It also includes conditions that are closely related to Intellectual Disability or that require similar treatment.

A child who is 9 years old or younger need not have 3 or more functional limitations under (4) above if they have a substantial developmental delay or specific congenital or acquired condition and has a high probability of meeting the criteria under (4) later in life, with or without services and supports.

“Intellectual Disability” is a condition characterized by either significant limitations in intellectual functioning (reasoning, learning, problem-solving) or adaptive behavior (everyday social and practical skills) that originates before the age of 22.

14. Subsection (tt) “Low Income”

As noted above in our comment on subsection dd (Extremely Low Income), the definition that appears at subsection (tt) for “Low Income” is actually the definition for “Extremely Low Income” under HSC section 50106. That statute does not include the term “Low Income,” so we are unsure what definition this term is supposed to have in the guidelines. If this is a reference to HUD’s definition of “low income family” at 24 C.F.R. 5.603, its inclusion in these guidelines seems unnecessary because HUD sets the threshold for “low income family” at 80% AMI and MHP has an eligibility threshold of 60% AMI.

15. Subsection (uu) “Lower Income”

As noted above in our comments on subsection dd (Extremely Low Income) and subsection tt (Low Income), the definition that appears at subsection (uu) for “Lower Income” is actually the definition for “Extremely Low Income” under HSC section 50106. Assuming this subsection is meant to refer to “Lower income households” under HSC section 50079.5(a), we reiterate our earlier confusion about why it is included in these guidelines at all since it sets a threshold of 80% AMI, in excess of the MHP eligibility threshold of 60% AMI.

16. Subsection (yy) “New Community-Based Developer”

Please see our comments under the definition of “Community-Based Developer.”

17. Subsection (jjj) “Rehabilitation”

This definition is unclear. It refers to HSC section 50096, which refers to repairs to a substandard building. That statute in turn refers to HSC section 17920(f) for a definition of substandard building, but section 17920 no longer contains a definition of substandard building.

We believe it is necessary to have a clear definition of Rehabilitation so the scope of rehabilitation necessary to qualify is not ambiguous. Please revise the guidelines to include the language that used to appear in HSC section 17920.

18. Subsection (III) “Rental Housing Development”

We disagree with eliminating health facilities as part of a "Rental Housing Development." Housing models throughout the state include satellite clinics that allow people with chronic medical or behavioral health disorders to receive treatment in an accessible location. People experiencing houselessness are often distrustful of health providers, and typically face transportation challenges. We submit that these facilities are a proven, critical component to promoting housing stability. They allow health providers (who do not themselves receive "housing money") to maintain a closer relationship with the housing provider and break down silos between sectors, which is necessary to reduce returns to houselessness. This is particularly true for “alcoholism or drug abuse recovery treatment facilities,” whose services may be critical to helping promote housing stability.

19. Subsection (ooo) “Residential Hotel Unit”

We recognize this definition comes from the MHP regulations at 25 C.C.R. 7301(r) and that it is used in the guidelines for consistency. But this definition is overbroad, and it would be helpful for the guidelines to clarify the intended scope of the regulatory definition.

Not every Efficiency Unit covered by California landlord tenant-law is a “Residential Hotel Unit.” Many apartment complexes have efficiency (studio) units that have one habitable room (which may include some cooking facilities). “Residential Hotel Units” are covered by landlord-tenant law but are distinguishable from standard efficiency units by common cooking facilities, the provision of some services, sometimes shared bathrooms, and other criteria. We would appreciate if HCD could use the guidelines to clear up the confusion.

20. Subsection (uuu) “Special Needs”

First, the definition erroneously refers to Section 7302(d)(2). There is no such subsection.

To the extent this is intended to refer to subsection 7302(e)(2), we note that there are two Subsections 7302(e)(2). We will refer to them as the “First” and “Second” Subsections 7302(e)(2). Please clarify and renumber the First and Second subsections (e)(2) and any cross-references.

It appears that to qualify for eligibility for the MHP program, a Special Needs Project needs to meet the requirements of the First subsection (e)(2), but that section fails to define a “Special Needs Project.” Equally troubling, Second subsection(e)(2) only appears to apply to a particular subset of special needs projects, those serving the chronically homeless. Neither of these sections, alone or combined, comprises an adequate definition of a “Special Needs Project.” Nor do they include a definition of “supportive services,” which are at the heart of special needs projects.

We understand that “Special Needs Projects” were previously called “Supportive Housing Projects.” We do not understand the change, and recommend that the guidelines retain the term “Supportive Housing Projects,” linked to the definitions of both “Supportive Services” and “Special Needs Populations.”

Given the importance of these projects under the MHP program, we propose the following definition of “Supportive Housing Project” (alternatively “Special Needs Project”):

(uuu) “Supportive Housing Project” [alternatively “Special Needs Project”] means a project with at least 20% of the units restricted to

serving Special Needs Populations, as defined in Section 7301(vvv), and which provides Supportive Services to individuals that are appropriate to their needs. Special Needs Projects must have a Supportive Services plan compliant with Section 7310.

See our proposed definition for Supportive Services in paragraph 24 below, and our comments under “Special Needs Population(s)” and Section 7302 regarding minimum percentages.

We believe this captures the concepts the Department wants to include but did not come across clearly in the drafting.

Many of the restrictions in the First and Second subsections (e)(2) are seriously problematic, including the requirement for 45% restricted units, some of the provisions that attempt to limit Housing First principles, and the confused and unlawful requirements in subsection (f). Please see our detailed comments under Section 7302 regarding the numerous issues with both the First and Second subsections (e)(2).

21. Subsection (vvv) “Special Needs Population(s)”

This definition continues to exclude people with certain types of disabilities who should be included. In addition, we remain confused by the unnecessary categorization of people by type of disability, particularly as the categorization leaves out under-served populations in some places and is duplicative in others. Specifically:

(vvv)(1). This definition excludes people transitioning from hospitals, nursing homes, development centers, and other care facilities, who have disabilities other than physical or sensory (e.g., mental disabilities and traumatic brain injuries). It also excludes people with physical or sensory disabilities who are transitioning from other settings—such as living with aging parents or in congregate settings or jails—who want to integrate into the community but need affordable housing with supportive services in order to live in the community rather than an institution.

(vvv)(2). See our comment above on the definition of “Intellectual Disabilities.”

(vvv)(6). See our comment above on why MHP's definitions of "Homeless" and "Chronically Homeless" exclude people cycling through jails, hospitals, and other institutions.

(vvv)(7). We have no objection to including people with chronic illness, but note that it overlaps with several other subsections.

(vvv)(10). As noted above, we believe changes are needed to the subsection that now refers to "Frail Elderly persons," although we believe it is an important category to include.

To address these issues, we recommend HCD revise the definition of "Special Needs Population(s)" to include people with a "Disability" (as revised in our comments above) who need "Supportive Services" to maintain housing stability. See our comments below on a suggested definition of "Supportive Services."

We also urge HCD to add back in language that was removed from prior versions. The 2021 draft guidelines proposed to eliminate from the definition of "Special Needs Population(s)" the category of "frequent users of public health or mental health services, as identified by a public health or mental health agency." We continue to object to the removal of that language, as it is a critical component of some existing programs and has proved helpful for reaching target populations. That language should be re-incorporated into the definition of "Special Needs Population(s)."

The revised definition of "**Special Needs Population(s)**" should read:

"(vvv) "Special Needs Population(s)" means:

- (1) individuals with a Disability (as defined in subsection (y)[*we anticipate that this will be consistent with our comments above on revisions to the definition of Disability*], who need "Supportive Services" [*we anticipate that this will be consistent with our comments below on revisions to the definition of Supportive Services*] to maintain housing stability;
- (2) individuals with substance use disorders;
- (3) individuals fleeing domestic violence, sexual assault, and human trafficking;

- (4) individuals who are Homeless [*we anticipate that this will be consistent with our comments on revising the definition to include people exiting institutions and people at risk of institutionalization*];
- (5) homeless youth as defined in Government Code section 12957(e)(2);
- (6) families in the child welfare system for whom the absence of housing is a barrier to family reunification, as certified by a county;
- (7) Older Adults in Need of Supportive Services [*we anticipate that this will be consistent with our comments above on revisions to the term “Frail Elderly”*];
- (8) frequent users of public health or mental health services, as identified by a public health or mental health agency;
- (9) individuals exiting from institutional settings; or
- (10) other specific groups with unique housing needs as determined by the Department.”

We note that our proposed additions and revisions to this definition are consistent with, and necessary to fully comply with, the definition of “Special Needs Populations” in the MHP regulations at 25 C.C.R. 7301(s), which include categories not listed in the guidelines’ definition (e.g., “individuals exiting from institutional settings”). These groups continue to experience disparities in access to housing and should be included in the guidelines’ definition of “Special Needs Populations.”

22. Subsection (yyy) “Supportive Services Costs”

This subsection requires a definition of Supportive Services to be fully comprehensible, but no definition currently exists. See our proposed definition below for “Supportive Services.”

We appreciate the inclusion of this definition and its breadth. It appears under section 7313(a)(3) that Supportive Services Costs may be paid from operating income. However, there does not appear to be any provision in the guidelines (other than in the “Operating Income” section) or cost containment section of the Consolidated Scoring Appendix indicating how HCD will take such costs into consideration in providing funding for Special Needs Projects that provide Supportive Services or how those extra costs will be addressed in a way that does not prejudice projects in the scoring ranking, and that provides for sufficient operating expenses to ensure provision of Supportive Services. In particular, we are concerned that any

cost containment criteria explicitly exclude operating expenses and Supportive Services Costs, given the range of services that may be necessary to serve different populations.

23. Subsection (bbbb) “Transitional Housing”

This definition is inconsistent with the UMR and with some state statutory definitions of transitional housing. The first sentence reflects the definition of “transitional housing” from HSC section 50675.2(h), except that it adds a maximum length of stay of 24 months, which is not present in the statute. The 24-month limit is present in other definitions of “transitional housing,” such as HUD’s definition at 24 C.F.R. 578.3, the Emergency Housing and Assistance Program’s definition at HSC section 50801(i), and the Transitional Housing Participant Misconduct Act’s definition at Civil Code section 1954.12(g). But all of these definitions include additional criteria that are not included in the MHP guidelines’ definition. Specifically, 24 C.F.R. 578.3 requires a lease agreement, and HSC section 50801(i) and Civil Code section 1954.12(g) both require the provision of services.

It would be helpful for HCD to adopt a definition of “transitional housing” that captures the most important components of each of these definitions: a minimum length of stay, tenancy protections, supportive services, and a pathway to permanent housing. We propose the following definition:

(bbbb) “Transitional Housing” has the same meaning as defined in UMR section 8301(w): A Rental Housing Development operating under programmatic constraints that require the termination of assistance after a specified time or event, in no case less than 6 months after initial occupancy, and the re-renting of the Assisted Unit to another eligible participant. Per Health and Safety Code section 50801(i), it includes supportive services exclusively designated and targeted for recently homeless persons. Per 24 C.F.R. 578.3, all Transitional Housing residents have a lease or occupancy agreement, the purpose of which is to facilitate the movement into permanent housing within 24 months. The lease shall terminate after 24 months, subject to extension as necessary as a reasonable accommodation for a person with a disability. Projects serving persons experiencing Homelessness, including Chronic Homelessness, shall comply with the core components of Housing First set forth in Welfare and Institutions Code section 8255.

With respect to setting a maximum length of stay, we recognize the importance of setting an end-date so that transitional housing does not become de facto permanent housing. But, we strongly advise that any requirements on a maximum length of stay specify that they are still subject to requests for reasonable accommodation if a tenant needs an extension of time to transition to permanent housing due to their disability. And, as applied to VHHP, Military and Veterans Code section 987.008(b) allows for re-designation of a transitional housing unit as an affordable rental or supportive housing unit if needed to allow a veteran to remain housed.

Lastly, we reiterate our appreciation to HCD for requiring that transitional housing providers comply with WIC section 8255's Housing First requirements. We understand this to be a requirement under WIC section 8256. However, HCD may still not be in full compliance with WIC section 8256 unless it amends its definition of "Homeless." WIC's Housing First requirements apply to all "state programs," defined in WIC section 8255(e) as: "any programs a California state agency or department funds, implements, or administers for the purpose of providing housing or housing-based services to people experiencing homelessness or at risk of homelessness, with the exception of federally funded programs with requirements inconsistent with this chapter." As discussed in our comments above, MHP's definitions of "Homeless" and "Chronically Homeless" do not include "At Risk of Homelessness." To bring the guidelines into compliance with WIC section 8256, we reiterate our recommendation that HCD revise its definitions to include "At Risk of Homelessness."

24. No definition of "Supportive Services"

Section 7301(yyy) includes a definition for the term "Supportive Services Costs" that reflects the UMR definition of that term. The definition includes reference to the term "Supportive Services," which is defined in the UMR but, as noted above, is not included in the MHP guidelines. This appears to be an oversight, as the term "Supportive Services" was included in the 2021 MHP guidelines and reflected the definition used in the UMR. We recommend that the 2022 MHP guidelines add "Supportive Services" back into the list of defined terms in Section 7301. We note that both the UMR and HSC section 50675.14(b)(2) have definitions of "Supportive Housing" that are applicable to these guidelines.

We recommend that HCD include a consolidated definition of “**Supportive Services**” that incorporates requirements from both the UMR and HSC 50675.14(b)(2). The revised definition would read:

“Supportive Services” are supports that a resident wants and needs to achieve and maintain housing stability, prevent institutionalization, improve mental and physical health status, and maximize the resident’s ability to live, and when possible, work in the community. It includes on-site or off-site services addressing social, health, educational, income support, and (where appropriate) employment services and benefits; coordination of community building and educational activities; individualized needs assessments; and individualized assistance with obtaining services and benefits.

We further address the scope of Supportive Services in our comments on Section 7310 below.

25. Defining “Accessible Housing Units”

For clarity, we recommend that HCD add the terms “Accessible Housing Units,” “Housing Unit with Mobility Features,” and “Housing Unit with Hearing/Vision Features,” to Section 7301. We propose the following definitions:

“Accessible Housing Units” means and refers collectively to “Housing Units with Mobility Features” and “Housing Units with Hearing/Vision Features.”

(1) A “Housing Unit with Mobility Features” means and refers to a housing unit that is located on an accessible route and complies with the requirements of 24 C.F.R. § 8.22 and all applicable provisions of UFAS or the comparable provisions of the Alternative Accessibility Standard, including but not limited to §§ 809.2 through 809.4 of the 2010 Standards for Accessible Design. A Housing Unit with Mobility Features can be approached, entered, and used by persons with mobility disabilities, including individuals who use wheelchairs. Such units must also comply with CBC 11B.

(2) A “Housing Unit with Hearing/Vision Features” means and refers to a housing unit that complies with 24 C.F.R. § 8.22, and all

applicable provisions of UFAS or the comparable provisions of the Alternative Accessibility Standard, including but not limited to § 809.5 of the 2010 Standards for Accessible Design. Such units must also comply with CBC 11B.

III. Article 2. Administration of Funds

A. Section 7302: Eligible Project

We appreciate HCD's revisions to these guidelines to implement AB 434's mandates of targeting assistance to households at the lowest income levels and funding projects with a significant percentage of units for households in Special Needs Populations. The guidelines take significant steps towards these goals, but could be improved further in key areas discussed below.

1. Subsection (d), TCAC accessibility requirements.

We reiterate our strong appreciation to HCD for adopting TCAC's accessibility standards of 15% mobility and 10% sensory units in new construction, and 10% mobility and 4% sensory in rehab projects, with higher percentages for senior housing (50% mobility in new construction and 25% mobility in rehab projects). The importance of this to people with disabilities cannot be underestimated. For example, just in the City of LA alone, as of November 30, 2021 there were more than 27,000 people on the City's waitlist and transfer list for accessible units. HCD's recent Analysis of Impediments more fully describes the need.

However, placement of detailed accessibility standards and priorities in two places is confusing and creates a potential for misinterpretation. This is particularly true because many sections in the TCAC regulations do not fully comply with all applicable architectural accessibility standards or with other legal requirements. Rather than cross-reference TCAC, and rather than include the specific architectural standards in Section 7302, we recommend that HCD replace the references to TCAC in this subsection with clearer, more detailed standards in Section 7315(b)(2). That way, the standards for HCD-funded projects will remain the same even if TCAC's standards change. All specific construction standards and related preferences should be placed in Section 7315(b).

In particular, Section 7302(d) of the guidelines state: “Exemption requests, as provided for in TCAC regulations, must be approved by the Department.” This sentence potentially violates the applicable laws and raises a number of troubling issues. HCD’s ability to grant exemptions is limited. Therefore, as noted below, we recommend against incorporating TCAC regulations by reference. The sentence should be removed in Section 7302 and any exemption requests should be addressed in Section 7315(b), in accord with our comments below.

Section 7302(d) should be revised to read: “Project meets the physical accessibility requirements, and Accessible Housing Unit rental priority requirements in Section 7315(b),” as that section is revised pursuant to our comments below. This will provide much needed clarity, produce better alignment, and will ensure compliance with applicable laws.

Please see our comments on Section 7315(b) regarding the correct standards and problems with the TCAC regulations.

2. First subsection (e)(2), Special Needs Project Type¹¹ (p. 15-16)

There are three serious problems with this Subsection.

First, it does not make clear that Special Needs Projects are those projects which provide Supportive Services to targeted Special Needs Populations. Nor does it make explicit that these Projects must have a plan that meets the requirements in Section 7310, regardless of which individuals with special needs are targeted. (Please see our comments in Section 7310.)

Currently, the requirements for Special Needs Projects appear in different places. For example, there is no reference here to the provision of Supportive Services or to a Supportive Services plan. In order for (e)(2) to qualify as a comprehensive set of requirements for Special Needs Projects, please revise the subsection as follows. Suggested deletions are in ~~red~~ **strikethrough** and suggested additions are in blue underlined.

¹¹ Section 7302 of the guidelines contain two subsections labeled (e). To keep our comments clear, we’ve noted whether the comment pertains to the first subsection (e) or the second subsection (e), and we’ve included the page numbers for the applicable subsection.

Special Needs, where at least ~~45~~ 20 percent [See comments below on percentages and segregation] of the Restricted Units are limited under Department Regulatory Agreements to occupancy by Special Needs Populations, ~~and the Project complies with the integration requirements specified in subsection (f) below~~ [Any integration requirement should apply to all projects, unless you are specifically discussing the integration of Restricted Special Needs Units in projects with less than 100% Special Needs Units, see below] and the Special Needs Project meets all of the following requirements:

(A) The Project must provide Supportive Services pursuant to a Supportive Services plan consistent with Section 7310;

(B) The LSP must have at least three years' experience providing services to the specific target population;

(C) The Sponsor must have experience owning or operating at least one project with units restricted by a public agency to a Special Needs Population; ~~and~~

(D) The property management agent must have at least one year's experience managing a project with units restricted by a public agency to a Special Needs Population;

(E) Restricted Units serving the Special Needs Population must be distributed throughout the project and among bedroom sizes;

(F) Follow tenant screening, property management, and service delivery practices in accordance with the core components of Housing First set forth in Welfare and Institutions Code section 8255. [See our comments on Second subsection 7302(e)(4)-(9)];

(G) Be operated in accordance with property management and Supportive Services plans approved by the Department, initially at time of application and then at such later time or times prior to occupancy as the Department may require; and

(H) Track and provide annual reports to the Department on tenant characteristics as specified in Section 7326.

Proposed new requirements (A) and (E) – (H) are appropriate for *all* Special Needs Projects.

Following this, if the Department has requirements that are unique to projects serving the Chronically Homeless, those could continue to be addressed in the Second Subsection 7302(e), such as (e)(1)-(3)(enhanced Sponsor, manager, and Lead Service Provider requirements), (e)(5)(requirements regarding the use of CES or alternatives), and (e)(6)(specific case manager ratios for these projects).

See also our comments on the definition of “Special Needs” in Section 7301(uuu). It would be helpful to include a revised definition of “Special Needs Project” in this section as well.

Second, the requirement in the First Section 7302(e)(2) to restrict occupancy of at least 45% of the units to Special Needs Populations has a segregative effect as applied to projects serving people with disabilities, which are a subcategory of Special Needs Populations. We understand that MHP must serve projects that, in addition to other criteria, “[c]ontain a significant percentage of units for families or special needs populations.” (HSC section 50675.7(c)(1)(4).) However, the 45% minimum contradicts federal guidance aimed at reducing segregation of people with disabilities. We therefore urge HCD to set the minimum at somewhere between 20% (the minimum level in prior version of the MHP guidelines) and 25%. To fully prevent segregation, HCD must also address the lack of a meaningful cap on the percentage of restricted units. See our comments on subsection (f) below on how the lack of a cap, coupled with a high minimum percentage, produces unlawful segregation for people with disabilities.

Third, the obligation to comply with the “integration” requirements in subsection (f), as that section is currently drafted, is discriminatory and inappropriate, and should be deleted unless subsection (f) is substantially revised. Integration is a critical objective, but subsection (f) as currently drafted is not the appropriate way to achieve integrated projects. Please see our comments at Section 7302(f). When revised it should apply to all projects, not just Special Needs Projects.

3. First subsection (e)(3), Senior Project Type (p. 16)

As currently written, this subsection states that Senior Projects are exempt from various laws. That is not the case. All projects, whether they qualify as senior housing or not, are required to comply with all state and federal fair housing laws. Projects meeting specific requirements as described below, and projects utilizing federal funds with different definitions of senior projects, are still required to comply with all fair housing laws, with the exception of a narrow exemption for age discrimination. The definition also fails to accurately capture the correct legal requirements for senior housing projects

A more appropriate definition, that encompasses all projects that qualify as Senior Housing (i.e. exempt from age discrimination provisions) under state law, is:

“Senior Housing” means any housing that is eligible under the definition of “housing for older persons” in California Government Code Section 12955.9(b). This includes:

- (1) Housing provided under any state or federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
- (2) Housing that meets the standards for senior housing in Sections 51.2, 51.3, and 51.4 of the Civil Code, except to the extent that those standards violate the prohibition of familial status discrimination in the federal Fair Housing Amendments Act of 1988 (Public Law 100-430)¹ and implementing regulations; and
- (3) Mobilehome parks that meet the standards for “housing for older persons” as defined in the federal Fair Housing Act, as amended by Public Law 104-76, and implementing regulations.”

4. Second subsection (e), Special Needs projects that include Chronically Homeless (p. 17-19)

There is no equivalent section for Special Needs Projects that serve populations *other* than the Chronically Homeless (i.e., projects serving the Frail Elderly, domestic violence survivors, families in the child welfare system, individuals who are Homeless or At Risk of Homeless but don't meet the narrow definition of Chronically Homeless, etc.). This should be broken into two sections: 1) a section establishing the criteria for Special Needs Projects *that need not include the Chronically Homeless* (see our comments above about putting those in the First Section 7302(e)(2)), and 2) a section establishing additional specific criteria, to the extent needed, for projects serving the Chronically Homeless.

To the extent that it is meant to apply to all Special Needs Projects, the criteria in (e)(1)-(4), (5), possibly (6), and (8) are either overly onerous and likely to make many excellent projects unable to qualify, or are unlawful. See our comments above on the need for a comprehensive definition of Special Needs Projects and their requirements, and our proposed revisions to the First Section 7302(e)(2).

To the extent that it is meant to apply to only Special Needs Projects serving the Chronically Homeless, we list our concerns below about Second Section 7302(e) subsections (4), (5), and (8).

The definition is not clear as to which projects fall into this category, because this section applies to projects with as few as 1 unit serving the "Chronically Homeless." While there may be some projects that have only one unit restricted to individuals that are Chronically Homeless, these requirements would seem overly burdensome in this context. This requires further clarification.

Furthermore, it appears that this definition, combined with the various criteria in the Scoring Appendix, may result in a situation where projects serving populations other than the narrow group defined as "Chronically Homeless" may be excluded from effectively competing for funds, including projects serving people experience Homelessness outside of the Chronically Homeless, those who are At Risk of Homelessness, and those at risk of institutionalization.

a) Second subsection (e)(4), Housing First

WIC section 8255's Housing First obligations apply to all projects that serve individuals who are homeless or at risk of homelessness, not just projects serving the Chronically Homeless (WIC sections 8255(e), 8256). They apply to all Special Needs Projects because those projects provide housing to people who are or were homeless, or who are at risk of homelessness or institutionalization. Therefore, we have included them in our draft above as a necessary component of Special Needs Projects and Supportive Services plans. The Housing First requirements should be best practices for all other funded projects as well.

We reiterate our appreciation to HCD for incorporating WIC section 8255's Housing First principles into the guidelines. But as discussed above in the Definitions section, the provisions of this subsection conflict with the statutory requirements of WIC section 8255 (as amended by AB 1220, effective January 1, 2022) which the guidelines expressly incorporate by reference in the definition of "Housing First" in Section 7301(jj). Furthermore, the full statutory provisions should be part of the requirements for qualification as a Special Needs Project, as noted above.

There are three main problems with this subsection's representation of Housing First core components.

First, subsection (e)(4)(B) includes language on use of criminal history information that conflicts with state law. The last sentence of subsection (e)(4)(B)—"Applicants may be rejected for failure to qualify for a public rental assistance program that considers criminal history in determining eligibility"—does not appear in WIC section 8255. It misstates the law and is inconsistent with the California Fair Employment and Housing Act (FEHA). The sentence should be deleted.

Instead, where specific state or federal programs are involved, the guidelines should require compliance with the FEHA regulations on use of criminal history information in housing (Title 2, Article 24 2 C.C.R. sections 12264-12271, particularly section 12270), which include specific provisions regarding the use of federal programs' use of criminal history. See also Title 2, Article 15, Discrimination in Land Use Practices, 2 C.C.R. section 12162(b), prohibiting public entities from mandating violations of Article 24.

Second, subsection (e)(4)(G) adopts language that is not found in the statute, violates the intent of Section 8255, and is potentially unlawful under state and federal fair housing and disability rights statutes. There is no exception in the statute for alcohol or drug use if “such use may potentially result in the forfeiture of the real property to a governmental entity.” To the extent it is meant to reference compliance with “crime-free” nuisance ordinances that exist in some jurisdictions, we caution HCD that those ordinances raise serious fair housing concerns given the discriminatory manner in which they are usually enacted and applied. They likely violate the California Fair Employment and Housing Act. (See the Fair Housing Regulations on Discrimination in Land Use, Title II, Article 15, 2 C.C.R. Section 12121-12162. In particular, see 2 C.C.R. Section 12162(b) regarding the discriminatory nature of most nuisance and crime free ordinances.) These ordinances also violate the AFFH obligation, which HCD recognized in its 2020 Analysis of Impediments (see the 4th bullet point of recommendations and action steps for Impediment #5: Tenant Protections and Anti-Displacement). Regardless of what the sentence is meant to reference, it should be deleted as inconsistent with Housing First core components.

Third, subsection (e)(4) omits new WIC subsection 8255(b)(8), which requires incentivizing tenant selection on a basis other than “first-come first-serve.” We note particularly that while the WIC statute refers to communities with CES systems, it does *not require* that such systems be used, so long as the system prioritizes admittance based on criteria that include, *but are not limited to*, factors such as vulnerability to early mortality and high utilization of crises services. This is consistent with WIC subsection 8255(b)(3), which specifically allows other methods of selection. This is also consistent with UMR section 8305(a)(4)(A), which allows but does not require the use of CES systems. Requiring Special Needs Projects to house tenants through the local CES conflicts with WIC section 8255. See our comments below on problems with the CES system.

b) Second subsection (e)(5), CES

We are concerned about subsection (e)(5)’s requirement that Special Needs projects fill vacancies through referrals from the local CES. This requirement conflicts with one of WIC’s core components of Housing First: acceptance of referrals directly from shelters, street outreach, drop-in centers, and other parts of the crisis response system. (WIC section

8255(b)(3), incorporated into the guidelines through reference in the definition of “Housing First” in Section 7301(jj).)

We strongly support the requirement to fill vacancies through sources other than the local CES because, in DRC’s experience and that of our colleagues, coordinated entry systems in most places are not effective at reaching the people most in need. They create unnecessary barriers for unhoused people with disabilities and, with the exception of the City of Los Angeles, fail to comply with their legal obligation to identify accessible units and prioritize occupancy of those units to people in need of those features. And, many communities report that CES operations perpetuate racial inequality.¹²

To the extent possible under federal law, and in compliance with WIC’s Housing First core components, we urge HCD to allow for the placement of individuals through alternatives to the local CES. We strongly support subsection (5)(A), allowing units to be filled by referrals from other sources, but recommend lowering the time frame from 60 days to 30 days.

Subsection (5)(A) should also specify that individuals placed through referrals inside or outside of CES must still meet the eligibility requirements for accessible units. Any acuity standard approved by the Department or used in funded projects must specifically include an assessment of the need for Accessible Housing Units (defined above in our comments on Section 7301) as required by federal law. For example, as part of the *ILCSC v. LA* settlement, the Los Angeles CES is required to have: 1) a way of identifying Accessible Housing Units, 2) a way of determining which unhoused individuals need the accessibility features of those units, 3) a way to match them, and 4) if there are multiple households that need the features, they then use the acuity index to prioritize among them. Under no circumstances are they permitted to fill Accessible Housing Units with households who do not need the accessible features. HCD should ensure this is standard practice in all its programs in order to comply with

¹² See e.g., C4 Innovation’s report “Coordinated Entry Systems: Racial Equity Analysis of Assessment Data,” October 2019, available at: https://c4innovates.com/wp-content/uploads/2019/10/CES_Racial_Equity-Analysis_Oct112019.pdf; and HUD’s COVID-19 technical assistance document: “Homeless System Response: Advancing Racial Equity through Assessments and Prioritization,” available at: <https://files.hudexchange.info/resources/documents/COVID-19-Homeless-System-Response-Advancing-Racial-Equity-through-Assessments-and-Prioritization.pdf>.

applicable legal requirements for Accessible Housing Units. (See 24 C.F.R. § 578.93(d)[Continuum of Care regulations regarding integration and accessibility, requiring compliance with HUD regulations at 24 C.F.R. Parts 8 and 100 and ADA accessibility regulations at 28 C.F.R. Parts 35 and 36]; 24 C.F.R. § 8.27[HUD regulation on occupancy of accessible units].)

For a further discussion of CES obligations relating to people with disabilities that are often ignored, see <https://dredf.org/wp-content/uploads/2019/08/Materials-Homeless-DREDF-LegalObligationsPoliciesPracticesForCoordEntryProcess-May-2018.pdf>, particularly the discussion in Section H on physical accessibility.

5. Subsection (f), integration in Special Needs projects

HCD is clearly committed to integration of affordable housing throughout communities, as reflected in the complicated issue of High Cost Areas in the Consolidated Scoring Appendix and the opportunity maps, and in some of the proposed guidelines. However, work remains to address both segregation of people with disabilities *in communities* and segregation *in buildings or projects*. Failure to integrate people with disabilities *within projects and buildings* continues to be a big issue, despite some attempts to address it, and the guidelines continue to be out of compliance with applicable laws.

As a reminder of the key disability and accessibility concepts discussed in the Overview above, distribution of accessible housing units is one—but not the only—component of integration. Some people with disabilities need accessible units, while others need supportive housing services but not accessible units. Some people with disabilities need *both* accessible units and supportive housing services, and some do not need either. Accessible units must be distributed throughout a project in a range of sizes and amenities to avoid segregation (see 24 C.F.R. 8.26), but that alone does not achieve integration. To avoid segregation, people with disabilities must also be able to live and interact with people without disabilities. Below are specific comments addressing these concepts in the context of the draft guidelines.

a) Subsection (f)(1), integration of “targeted populations with the general public” in Special Needs Projects.

We read subsection (f)(1) as an attempt to address potential segregation concerns, and/or to address the required distribution of Accessible Housing Units. Unfortunately, it does neither well and creates more problems than it solves.

One problem is that it cites to a truncated, incomplete version of the distribution requirements of 24 C.F.R. 8.26 and, more concerningly, replaces the term “accessible dwelling units” with “Disabled Populations.” “Disabled Populations” (i.e. people) are not the same as dwelling units and cannot be “distributed” in a building in the same way. The guidelines’ changes to, and misapplication of, 24 C.F.R. 8.26 results in a section that confuses two completely different concepts: 1) distribution of Accessible Housing Units within a building, and 2) integration. Integration of Accessible Housing Units within a building is different than the general concept of integrating buildings, which refers to providing individuals equal access to units in the building, rather than clustering them into particular parts of a building or in particular buildings of a multi-building property. A building could comply with the distribution requirements of 24 C.F.R. Section 8.26 and still be completely segregated if a majority of its units were restricted to people with disabilities. (See our comments below on subsection (f)(2) for a detailed discussion of segregation and integration as it applies to people with disabilities.) As a result, subsection (f)(1) does not adequately protect against segregation.

Another problem is that, as currently written, subsection (f)(1) completely misstates 24 C.F.R. section 8.26, which applies only to “accessible dwelling units”—not other types of Restricted Units, or units occupied by people with disabilities who do not need Accessible Housing Units, or units occupied by other Special Needs Populations. We have no objection if HCD wishes to ensure that the *units* serving people with special needs are distributed throughout a building, so long as they include units of all sizes and equivalent amenities. (This would be consistent with the UMR regulations at 25 C.C.R. Section 8304(a).) However, that alone would be insufficient to guard against segregation of people with disabilities for the reasons discussed in subsection (f)(2) below.

A final problem is that the guidelines only apply the distribution requirements of 24 C.F.R. Section 8.26 to Special Needs Projects. That is inconsistent with the law; the regulation applies to all projects, not just Special Needs Projects. Therefore, the discussion of compliance with 24 C.F.R. Section 8.26 does not belong in a section on Special Needs Projects. It should be in Section 7315(b) with the other regulations covering physical accessibility in construction, as noted in our discussion of Section 7315.

b) Subsection (f)(2), occupancy restrictions

In our comment letter on the 2020 MHP draft guidelines, we expressed concern that the absence of a cap on the number of targeted units that can exist in a project may undermine the goal of community integration for people with disabilities. We were surprised to see that the 2021 MHP draft guidelines not only failed to impose a cap, but also *increased* the minimum requirements for targeted populations from 25% to 45%. The 2022 draft guidelines appear to make no changes to the 2021 version of subsection (f), except that the paragraph on “Disabled Special Needs Populations” (formerly subsection (f)(3)) has been moved to Section 7301 as the definition for “Disabled Populations.” This is a long-standing issue with HCD programs. It violates the ADA’s integration mandate as well as fair housing laws prohibiting segregation, and it is completely inconsistent with HCD’s AFFH obligations.

A 49% cap on the number of restricted units is insufficient to guard against segregation because:

- 1) It far exceeds the 25% cap favored by federal law (see the next paragraph for details);
- 2) The First Section 7302(e)(2) requires *at least* 45% of the units be restricted to Special Needs Populations;
- 3) It only applies to projects with 20 or more units. For projects with fewer than 20 units, the guidelines impose no cap at all; and
- 4) It only applies to HCD-funded units. That means, depending on the restrictions applied by the other funding sources, a building could still result in 100% restricted occupancy.

The 45% minimum on Special Needs units will make all projects funded by HCD ineligible for HUD Section 811 funding. HUD is unlikely to see this as consistent with the *Olmstead* decision, community integration obligations in

federal law, or Affirmatively Furthering Fair Housing requirements. It is also bad public policy and inconsistent with Congressional and HUD's demonstrated concern that policies targeting occupancy by people with disabilities at more than 25% create an impermissibly high risk of segregation. For example, the Frank Melville Supportive Housing Investment Housing Act of 2020 allows no more than 25% of units in any building funded with Section 811 project rental assistance to restrict occupancy to persons with disabilities.¹³ This applies regardless of the nature of other funding sources. Section 811 provides project-based Section 8 funding for these units in order to serve people at the very lowest income levels. These guidelines will make use of Section 811 impossible in California.

California developers have already struggled with this. Here is information from one such developer, The Kelsey, about how the proposed high percentage requirements impact their ability to create housing with Supportive Services for those most in need:

Right now, the proposed AB 434 guidelines only prioritize funding for projects that target homes to people with disabilities under their "Special Needs" category. That category requires at least 45% of homes to be targeted to that population. Doing so excludes all projects that are committed to full integration of people with disabilities, as mandated by the ADA and defined by the HUD 811 program's requirement of no more than 25% of units for disabled people. This cap of 25% ensures communities are fully integrated among people with and without disabilities without over-concentrating, congregating, or requiring people to live in disability-specific settings.

Implementing the 45% minimum requirement in [the first] Section 7302(e)(2), and in related scoring criteria, would prevent future projects like The Kelsey Ayer Station from being competitive for funding. The Kelsey Ayer Station is a 100% affordable housing community, less than 400 feet from the light rail, and a 10-minute roll from downtown San Jose. This 115-unit community is universally designed to serve people with and without disabilities. It will provide

¹³ Frank Melville Supportive Housing Investment Act of 2010, S. 1481, 1/5/2010; Section 2(b)(4)(A)).

30% of its units for extremely low-income San Joseans (20% AMI) at less than \$500/per month rent. The Kelsey Ayer Station is explicitly committed to affordability levels that are inclusive to people with disabilities whose sole source of income is SSI. This environmentally-forward, urban infill project is inherently more expensive to build than projects on larger sites less connected to amenities. The project was awarded funding from HCD's Transit Oriented Development (TOD) program, yet if this current draft criteria is implemented and applied to TOD, we wouldn't have been competitive. We would not have been competitive because The Kelsey Ayer Station reserves 24.5 percent of the units for extremely low and low-income people with disabilities who need supportive services, not 45%. This cap on reserved homes aligns with the integration mandate of Olmstead and the Americans with Disabilities Act, and therefore qualified us to receive HUD Section 811 funding.

The Kelsey Ayer Station has been celebrated as a first of its kind disability-forward housing for the rest of the state and country to model. Despite this community being disability-forward—ensuring that the development and future operation is based on the needs of people with disabilities and community inclusion—under the proposed “at least 45%” requirement, projects like this would not qualify as special needs. HCD must align its consolidated scoring criteria to ensure that projects that explicitly aim to create inclusive, integrated housing for people with disabilities who need supportive services remain competitive for funding. We note that the same conflict would apply to our San Francisco project, The Kelsey Civic Center which is earlier in the development process.

Another example of the problems with segregating people with disabilities, and the illegality of such segregation, is the litigation that took place in New York around the state's adult homes serving individuals with severe mental health issues. There, Disability Advocates, Inc. (a sister agency to DRC, now called Disability Rights New York) brought suit against the state for operating its adult homes in a way that violated the integration mandate of Title II of the ADA and Section 504 of the Rehabilitation Act.¹⁴ The suit alleged that placing people with serious mental illness into “impacted” adult homes (those where more than 25% of the residents had serious mental

¹⁴ *Disability Advocates, Inc. v. Paterson*, (E.D.N.Y. 2009) 598 F.Supp.2d 289.

illness) violated the requirement to serve people with disabilities in the “most integrated setting” possible. At summary judgment, the court confirmed that the best source for understanding what the phrase “most integrated setting” means is the text of the ADA regulations themselves, which define it as a setting that enables people with disabilities to interact with people without disabilities to the fullest extent possible.”¹⁵ The case was later consolidated with a case filed by the Department of Justice alleging similar claims, and the parties settled. The remedies in the settlement included: 1) a prohibition on placing any more individuals with serious mental illness into the impacted housing, and 2) a requirement that all such impacted homes develop a plan to move residents with serious mental health illness into integrated supported housing until the percentage falls below 25%.¹⁶ The settlement notes a New York Office of Mental Health Advisory stating that the impacted adult homes were not conducive to the recovery and rehabilitation of the residents.¹⁷

Based on these examples, we see no justification for HCD’s cap of 49-100% depending on funding restrictions. Additionally, we are concerned that subsection (f)(2) waives the already high (and sometimes non-existent) cap for “projects complying with alternative requirements for demonstrating Olmstead compliance adopted by counties and approved by the Department.” It is unclear from the guidelines what these “alternative requirements” are and whether they are consistent with federal law.

To address these issues and prevent segregation, HCD must do two things: 1) lower the minimum occupancy restriction in the First subsection (e)(2) to 25% and 2) impose caps on the total number of units restricted to people with disabilities (including Chronically Homeless) to no more than 25% in a building, regardless of funding source. Only buildings with 10 or fewer units should be allowed to restrict 100% of units to people with disabilities.

To be clear, we agree with the language in subsection (f)(2) that the percentage cap must not be used to preclude occupancy of a non-restricted unit by a person with a disability. That would be patently illegal.

¹⁵ *Id* at 320.

¹⁶ *U.S. v. State of New York*, U.S. District Court, Eastern District of N.Y., Case No. 1:13-cv-04165-NGG-MDG, Doc. 5, Settlement Entered July 23, 2013

(<https://www.clearinghouse.net/chDocs/public/PB-NY-0013-0036.pdf>).

¹⁷ *Id*.

We recommend the following modification, that separates this important non-discrimination concept from the funding issues: “The project shall not prohibit or limit occupancy of non-restricted units by persons with disabilities.”

6. Subsection (i), Multiple Department Funding Sources

We appreciate the need for flexibility in funding and also the elimination of the need to apply to multiple funding sources. We hope that in distributing funding sources in a particular project, the Department will pay attention to a problematic issue that is referred to by the City of Los Angeles as “unicorn” units. In implementing the *ILCSC v. LA* settlement, some units have been very difficult to rent because of funding layering. As an example, it is easy to find someone to fill an Accessible Housing Unit, or a veteran’s unit, or a Housing for a Healthy California unit. However, finding someone to fill an Accessible Housing Unit, who is a person with a disability who needs the features, who is a veteran, and who also meets the requirements of Housing for a Healthy California, is extremely difficult. Since HCD may be using multiple funding sources in a project, it should provide guidance to prevent the creation of “unicorn” units by limiting the use of multiple funding sources with different eligibility requirements in particular units, particularly in the required Accessible Housing Units. We note that not all layering creates this problem.

Additionally, subsection (1) in these guidelines does not match the corresponding section in the Omnibus Modification to Program Guidelines from the August 20, 2021 Repeal of Stacking Prohibition memo.¹⁸ The modification from the stacking memo restricts stacking to a maximum of four Department funding sources per project (two from development loans and two from housing-related infrastructure grants). That restriction does not appear in the guidelines. HCD should clarify whether that restriction is still in effect.

¹⁸ Repeal of Stacking Prohibition of Multiple Department Funding Sources, Notice Number 21-06, August 20, 2021 (available at: https://www.hcd.ca.gov/grants-funding/docs/admin_memo21-06_stacking_prohibition_repeal.pdf).

B. Section 7303. Eligible Sponsor.

Subsection (c) is inconsistent with subsection (a). It does not include local governments, Tribal entities, or other organizational types listed in subsection (a) that are not either for-profit, limited profit, or nonprofit. We note that subsection (c) reflects language from the MHP regulations (25 C.C.R. 7303(b)) and subsection (a) modifies language from the regulations (25 C.C.R. 7303(a)). To the extent that there is a discrepancy between subsection (a) and (b) of 25 C.C.R. 7303, HCD should use the guidelines to clarify the ambiguity. We believe the broader definition in (a) should control, with subsection (c) clarifying that any of the entities defined in (a), where appropriate, could be either for-profit, limited-profit, or nonprofit.

C. Section 7302.1¹⁹ Threshold Requirements.

This section should include the obligation to provide Accessible Housing Units under the required construction standards, as well as the obligation to comply with fair housing and nondiscrimination laws.

We recommend that HCD add the following new subsection (o):

“(o) The Project complies with the accessibility and fair housing obligations in Section 7315.”

Section 7302.1(l) is ambiguous. It is not apparent from the Consolidated Scoring Appendix how or where these 7 points are applied, what they include, or how they relate to other points available in the Consolidated Scoring Appendix. Further, it is not clear whether Special Needs Units under 7302.1(k) also need to achieve some similar minimum score. If this is intended to describe certain standards for services amenities, those should be specifically described here. The citation appears to be erroneous. CDLAC regulations at 4 C.C.R. 5230(i) refer to readiness to proceed, not service amenities. The intended reference is not clear.

D. Section 7304. Eligible Use of Funds.

In our prior comment letter, we recommended that HCD include “costs incurred to make a dwelling unit or the common areas of a project

¹⁹ Please note the Table of Contents lists this section as 7303.1, but it’s numbered 7302.1 in the body of the guidelines.

accessible to people with disabilities” an itemized eligible cost under this section. We are disappointed to see that HCD did not incorporate that suggestion into these guidelines, particularly since one of the action steps listed for Impediment #10 in the 2020 Analysis of Impediments is: “Analyze programs and eligible expenses, seek to allow, where possible, accessibility modifications as an eligible expense.” If HCD has determined that it is not possible to allow accessibility modifications as an eligible expense, we respectfully request an explanation as to why.

Further, we object to Subsection 7304(b)(8)(A). Space for services appropriate to a Supportive Services plan, such as health services, should be included. Housing models throughout the state include satellite clinics that allow people with chronic medical or behavioral health disorders to receive treatment in an accessible location. People experiencing houselessness are often distrustful of health providers, and typically face transportation challenges. We submit that these facilities are a proven, critical component to promoting housing stability. They allow health providers (who do not themselves receive "housing money") to maintain a closer relationship with the housing provider and break down silos between sectors, which is necessary to reduce returns to houselessness.

E. Section 7305. Cost Limitations.

We are concerned that overly restrictive cost limitations may result in difficulty developing in markets with high needs where land, labor, and other costs are very high; or will result in poor construction that will require substantial rehabilitation and additional significant costs in a few years; or will result in inadequate maintenance and reserves. We appreciate the need for ensuring public dollars go as far as possible, but we know from years of experience that underfunding projects costs the public sector disproportionately more in future years. We certainly agree that cost limitations are appropriate, and encourage HCD to ensure that they are reasonable.

In addition, the guidelines improperly ignore UMR sections 8311(c), (d), and (e), which seem to be an important part of cost limitations. As discussed above, HCD does not have authority to override existing regulations without using the procedures set forth in the California Administrative Procedures Act to modify those regulations. On its face, the

UMRs apply to the MHP program and other programs covered by AB 434. (See 25 C.C.R. Section 8300.)

This section generally sets clear cost limitations. In light of Section 7305 and UMR Section 8311, we believe that further points in the Consolidated Scoring Appendix for cost containment are onerous and unnecessary.

Section 7305(a)(3), regarding operating expenses, should explicitly incorporate funds needed for Special Needs Projects to fund Supportive Services in compliance with other sections of the guidelines.

F. Section 7306. Type and Term of Loan

Section 7306(e) should make it explicit that accessibility requirements cannot be waived or modified other than as set forth in our proposed Section 7315(b).

G. Section 7310. MHP Supportive Service[s]²⁰ Plan Requirements

In general, we strongly support the requirements of this section and appreciate HCD's attention to the supportive services needs of its housing program residents. This is a critical component of Special Needs housing of all types. We recommend that the section start by incorporating the definition of Supportive Services that we propose above:

“Supportive Services” are supports that a resident wants and needs to achieve and maintain housing stability, prevent institutionalization, improve mental and physical health status, and maximize the resident’s ability to live, and when possible, work in the community. It includes on-site or off-site services addressing social, health, educational, income support, and (where appropriate) employment services and benefits; coordination of community building and educational activities; individualized needs assessments; and individualized assistance with obtaining services and benefits.”

²⁰ Grammatically, this title should refer to “services” (plural) rather than “service” (singular).

This definition encompasses all Supportive Services in all Special Needs housing. While the intensity and specific nature of supports varies with specific Special Needs Populations, this definition encompasses all of them.

We have a number of concerns about the current draft.

First, this Section should be comprehensive and consistent so it applies to all Supportive Services plans in all programs. Providing a single, inclusive set of baseline obligations for all Supportive Services plans will further simplify review and the application process for those projects seeking funds from multiple sources, and is necessary to meet the requirements of AB 434. This section should provide a baseline upon which other programs can build. As needed, there can be additional sections of the Supportive Services plan that address *additional requirements* for particular Special Needs Populations that require different services. As an example, projects serving Chronically Homeless populations would have to meet the baseline requirements of this section and also requirements specific to that population. Programs with separate application provisions (like VHHP), to the extent they remain, must require compliance with this section but can then incorporate additional provisions unique to the program in their own guidelines. We propose additions and clarifying language towards this goal.

Further, we recommend that HCD revise this section to align with the approach used in Section 214 of the VHHP guidelines. Those guidelines clearly list the required components of a Supportive Services plan, with different requirements depending on the project type and its population served.

Second, we have additional comments on this section regarding ambiguities that should be resolved. An overarching ambiguity is the uncertainty of when a Supportive Services plan is required. This section references Special Needs Populations, but does not specify whether only Special Needs Projects must develop Supportive Service plans or if this requirement applies to all Sponsors, with particular plan requirements for Special Needs Projects. The requirement for a Supportive Services plan should apply to all Special Needs Projects, as well as VHHP. Please see our proposed amendments above to the definition of a Special Needs Project and other sections.

The guidelines also need to specify that a project receiving a supportive housing loan described in 25 C.C.R. 7340 must develop a Supportive Services plan that meets the requirements of 25 C.C.R. 7345.

Lastly, the guidelines should also include an explanation as to how HCD will evaluate the adequacy of the Supportive Services plan in MHP projects, including any points or scoring criteria applied.

Specific comments:

1. Revise Subsection (a).

We recommend that subsection (a) be revised as follows:

Consistent with 25 C.C.R. 7324(d)(13), Special Needs Projects must develop a Supportive Services plan that describes how Supportive Services, as defined above, will be provided to the identified Special Needs Population, as set forth in more detail below.

We recommend moving the staffing criteria into one of the components of the preliminary plan.

2. Subsection (b)(2) – First sentence.

Much of the language in subsection (b)(2) is confusing. The subsection begins with the requirement to provide “a description of the tenant selection criteria and process for the units serving the designated Special Needs Populations, in accordance with applicable state and federal fair housing laws.” If this language simply means that tenant selection criteria and processes must comply with all applicable state and federal fair housing laws, that should be said more explicitly. We recommend this be revised to read:

A description of the tenant selection criteria and process for the units serving the designated Special Needs Populations. The tenant selection criteria and processes must comply with all applicable state and federal fair housing laws, as required in Section 7315(a) above, as well as UMR section 8305.

If HCD is looking for a more specific analysis, that should be made clearer. We request that HCD clarify what laws it is referencing and what the underlying policy concerns are for these provisions. If HCD is asking Sponsors to explain how they will select tenants from target populations without violating housing discrimination laws, that should be clarified. Any selection process should encompass the requisite priorities for Accessible Housing Units, as discussed above.

3. Subsection (b)(2) – Second sentence.

The second sentence in Subsection (b)(2) then requires projects serving Homeless and Chronically Homeless populations to explain how the project “will be connected to the local CES and conform to Housing First practices, except as provided in Section 7302(e)(4).” This muddles two concepts: Housing First and using CES. They should be separated. We recommend the following changes.

New (b)(3). A description of how the project will comply with the core components of Housing First described in Welfare and Institutions Code section 8355.

We recommend this change to address four problems with the current drafting. First, Section 7302(e)(4) does not contain an express exception to WIC’s Housing First core components, so it is unclear which exception is being referenced. If HCD is referencing (e)(4)(B)’s permission to reject applicants based on criminal history, see our comments above about how that language violates the FEHA regulations on use of criminal history information in housing. And if HCD is referencing Section 7302(e)(5)—which contradicts WIC section 8255(b)(3)—we again urge HCD to reconsider its requirement to utilize local coordinated entry systems because such a requirement is unlawfully in conflict with the statute and is bad policy for the other reasons discussed above.

Second, *all* Special Needs Projects, not just those serving Homeless and Chronically Homeless populations must comply with WIC section 8255. As discussed above, WIC section 8255 applies to all state programs serving people experiencing homelessness and who are at risk of homelessness. We contend that all Special Needs Populations are at risk of homelessness and, therefore, all Special Needs Project are subject to WIC section 8255.

Third, no exceptions to the requirements in Section 8255 should be permitted.

Fourth, in regard to CES, please see our comments above. We recommend the following new separate subsection:

New (b)(4). A description of how the project will connect with the local CES program, as available and appropriate to the population served, and alternative methods for selection, such as referrals from health services, the VA, or the use of other acuity measures. This shall not include broad first-come, first serve selections.

4. Current Subsection (b)(3), service descriptions.

In our prior comment letter, we expressed confusion about when the guidelines require intensive services and when they do not. The 2022 guidelines appear to remove much of the language on this issue that was proposed in the 2021 version, but the 2022 version still references a requirement for intensive services in subsection (b)(3)(A). That subsection requires “intensive services” for projects that serve “high acuity Homeless and Chronically Homeless populations (as well as other populations as determined by the Department).” The guidelines do not include a definition of “intensive services,” which creates substantial ambiguity.

In addition, we are concerned about the distinction between Supportive Services and “intensive services” because the services that residents need at any given time, even within similar populations, can vary substantially. For example, the needs of unhoused individuals when they first move in are likely to diminish as they stabilize, but they should be able to remain in place and use the services as needed. Similarly, individuals in projects that start with less intensive services should not be required to move to a location with increased services if their needs change in the future. That would be especially burdensome on people with disabilities and aging populations. In fact, the ability to age in place is one of the primary principles of the Master Plan on Aging.²¹ Service plans must be adaptable

²¹ Available at: <https://mpa.aging.ca.gov/>. See Goal One: Housing For All Stages and Ages, and the 2021-2022 MPA Initiatives. We note that BCSHA is a lead agency on many of these.

to serve people over time, including as they age or as their circumstances or disabilities evolve.

Therefore, the regulatory obligation to provide Supportive Services should be flexible, with some recognition that more intensive services may be more expensive or difficult to provide.

5. Current Subsection (b)(5), location of services

The following language shall be added: “For individuals who have mobility or other disabilities relating to transit, what services and reasonable accommodations will be provided to assist tenants to access off-site services.” This could include assistance with accessing paratransit, availability of an accessible van or car for transport, or other options.

6. Current Subsection (b)(7), evidence-based practices

This section should identify how trauma-informed practices and services will be used, as appropriate to the population served.

7. Current Subsection (b)(8), tenant engagement plan

This section should make it explicit that services are voluntary and that tenants are never required to participate in services and provision of housing is never conditioned on participation in services. The plan shall describe how it will actively encourage, but not require, participation.

8. Proposed New Subsection, individual tenant assessment and planning

The plan should include a section describing how individual tenant assessment and planning will occur, including how staff will work with tenants to identify the tenant’s choices and needs, how they will plan to meet tenant-identified goals, and how they will actively engage in early identification of and interventions in behaviors that may jeopardize housing. It should also discuss how they will work with tenants on eviction prevention planning and coordination, education on landlord and tenant rights and responsibilities, coordination with property management, assistance with credit repair, case management and peer support, life skills

training, mediation of conflict with landlords or neighbors, care coordination, connection with community resources, employment services, benefits advocacy, and other services the tenant chooses to help maintain their housing stability.

9. Current Subsection (b)(11), staffing plan

We recommend that the second sentence be modified to indicate that it only applies to certain projects (such as the Chronically Homeless, if that is true) and to identify any other minimum standards that apply for other types of special needs projects.

We suggest moving the second paragraph in subsection (a), concerning allocation of duties among case managers, resident services coordinators, and other staff, to this subsection. This is also an appropriate place for the last sentence in current subsection (a).

10. Current Subsection (b)(12), communication protocols

We strongly support the language in subsection (b)(12) requiring the development of communication protocols between property management and service staff with respect to tenant matters. We have two specific concerns.

First, the language is *underinclusive*, because it only discusses reasonable accommodations and not related obligations for reasonable modifications and provision of auxiliary aids and services for effective communication, all of which are required by the state and federal fair housing laws and the ADA. The subsection should be replaced with the following:

(12) A description of the communication protocols between service staff and property management staff, including how the staff will work together to:

- (i) prevent evictions,
- (ii) adopt and ensure compliance with harm reduction principles, and
- (iii) receive, respond to, and implement requests for reasonable accommodations ~~policies~~, reasonable modifications, and auxiliary aids and services for effective communications during

lease-up and throughout the life of the Project. [The handling of these requests must comply with the requirements of the state and federal laws listed in Section 7315, particularly the ADA and FEHA.](#)

Second, the obligations to prevent evictions, adopt and ensure compliance with harm reduction principles, and to comply with fair housing obligations (including reasonable accommodations, reasonable modifications, and effective communications) apply to all projects, not just Special Needs Projects. The obligation to comply with these should be made explicit, as we discuss in more detail in Section 7315(a), and should be included in the Regulatory Agreements. (See our comments below on Regulatory Agreements in section 7322.)

11. New Subsection (tenants' rights)

For consistency in implementation, the guidelines should require that Supportive Services plans be consistent with the tenants' rights requirements that apply to all projects in the UMR and MHP regulations. We recommend adding the following new subsection:

(15) A description of how the Supportive Services plan complies with the requirements of UMR sections 8305 (Tenant Selection) and 8307 (Rental Agreement and Grievance Procedure).

12. New Subsection – Evaluation of Supportive Services Plan

HCD should describe how it will evaluate Supportive Services plans for adequacy, identify any minimum standards, and be explicit about any ranking or rating criteria it will employ in regard to Supportive Services plans.

IV. Article 3. General Requirements

A. Section 7315 [sic]²². State and Federal Laws, Rules, Guidelines and Regulations.

In our last comment letter, we made substantial comments on this section. We appreciate HCD's efforts to respond to those comments in the 2022 guidelines, but these guidelines still do not adequately respond to our detailed comments on the need for explicit compliance with critical fair housing obligations for people with disabilities. Unfortunately, the 2022 guidelines continue to omit several key non-discrimination and accessibility requirements while muddling together some overlapping requirements. We reiterate our request that HCD revise this section to specify with clarity what is required of its funding recipients. A blanket requirement to "comply with all applicable laws" is insufficient because it does not specify which laws apply.

In addition to the segregation and integration issues addressed above, the proposed guidelines fall short of complying with HCD's obligations to enforce fair housing and nondiscrimination in its programs. The general statements in the introductory paragraph of Section 7315 and in 7315(a) are incomplete and insufficient to put recipients on notice of their specific detailed fair housing obligations in these projects, or to provide a basis for HCD to establish that it is complying with its fair housing certifications to HUD.

1. Subsection (a) Fair Housing Act

As we previously commented, this subsection should begin with a broad nondiscrimination requirement for projects that should also be reflected in the legal documents and the regulatory agreement. There is no other overall statement in the Guidelines requiring compliance with all of the applicable laws, including nondiscrimination and accessibility provisions unrelated to construction. We recommend adding the following as subsection (a)(1):

All Sponsors shall adopt a written non-discrimination policy requiring that no person shall, on the grounds of race, color, religion, sex,

²² The 2022 guidelines include two sections labeled 7315. Our comments here pertain to the first section 7315 on state and federal laws, which should be renumbered 7314.

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 HCD funds. This requirement shall apply to Sponsors, recipients, and service providers and their partners, agents, employees, contractors, subcontractors, grantees, and subgrantees.

Other major problems in subsection 7315(a) include:

1. The title to the subsection is misleading. Subsection (a) is entitled “Fair Housing Act” but references state laws that are not part of the federal Fair Housing Act and fails to include all applicable federal and state laws. It should be expanded and renamed “Nondiscrimination and Fair Housing Obligations.”
2. The lists of applicable laws in Section 7315(a), and in the introduction to Section 7315, are incomplete as a statement of the project’s major nondiscrimination and fair housing obligations. The subsection fails to list critical nondiscrimination laws, including federal laws such as the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act, and state laws such as Government Code Section 11135, the Unruh Act, the Disabled Persons Act, and other statutes enforced by the Department of Fair Employment and Housing. (We do not purport to provide a comprehensive list of all applicable civil rights laws, just some of the most critical ones from our perspective. See, e.g. <https://www.hudexchange.info/sites/onecpd/assets/File/Basically-CDBG-State-Chapter-15-Fair-Housing.pdf>. Nor do we address HCS obligations under Section 504 for a Self-Evaluation/Transition Plan covering its housing programs.)

The laws that should be listed are:

(a) the Americans with Disabilities Act, as amended, (42 U.S.C. 12131 et seq.) and its Title II and Title III regulations at 28 C.F.R. Part 35 and 36;

(b) The Fair Housing Act, amended by the Fair Housing Amendments Act, (42 U.S.C. 3601 et seq.) and its regulations at 24 C.F.R. Part 100;

(c) Section 504 of the Rehabilitation Act (29 U.S.C. 794 et seq.) and the regulations at 24 C.F.R. Part 8;

(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its regulations at 24 C.F.R. Part 1;

(e) the Fair Employment and Housing Act (Gov't Code 12900 et. seq.) and its regulations at 2 C.C.R. section 12005 et seq.;

(f) the Unruh Civil Rights Act (Civil Code section 51 et. seq.);

(g) Government Code section 11135; and

(h) the Disabled Persons Act (Civil Code section 54 et. seq.).

3. The second sentence in subsection 7315(a) requires Sponsors to submit an attorney's opinion demonstrating that their occupancy restrictions (but apparently not other aspects of the program) comply with the Unruh Civil Rights Act and FEHA, but makes no mention of the HUD regulations on marketing and occupancy of Accessible Housing Units. The opinion should broadly encompass the obligations to include the requisite Accessible Housing Units and to adopt nondiscriminatory leasing policies that include appropriate priorities for those units. The term "occupancy restrictions" in this sentence is very ambiguous, since the term is not defined in the proposed guidelines. If this is a reference to federal requirements on the inclusion of accessible units and the distribution, marketing, and leasing of accessible units, it should be clarified and moved to subsection (b) with the other physical accessibility requirements. If it is something else, it must be much more specific and include standards for how the Department will determine that the opinion is acceptable.

4. HCD has failed to respond to our detailed comments on the need for explicit requirements for compliance with critical fair housing obligations for people with disabilities, such as: 1) the requirements to provide reasonable accommodations and reasonable modifications under the ADA and the state and federal fair housing laws, 2) the obligations to provide auxiliary aids and services needed for effective communication under the ADA, and 3) other requirements that are often violated by subsidized housing requirements. While there appear to be some requirements in connection with Supportive Services and transitional housing, the legal requirements apply to all projects and should be explicit threshold requirements for all projects.

In particular, the obligations of subsidized housing providers to provide reasonable modifications for people with disabilities needs to be addressed in detail, since subsidized projects are obligated to pay for those modifications, unlike private sector projects. (See the Joint Statement of HUD and the Department of Justice: Reasonable Modifications under the Fair Housing Act,²³ particularly Question/Answer 31, and the new FEHA regulations on reasonable modifications effective January 1, 2022 [2 C.C.R. Sections 12176-12181], particularly Section 12181(h).) We recommend that modifications be included among eligible costs, as noted above.

Nothing in the draft guidelines requires that Sponsors demonstrate compliance with basic nondiscrimination and accessibility requirements. HCD should require funding recipients to adopt and implement a nondiscrimination policy, as well as policies for providing reasonable accommodations, reasonable modifications, and auxiliary aids and services for effective communications with residents with disabilities. As far as we can tell, the only place where the guidelines require a Sponsor to have a reasonable accommodation policy is in its Supportive Services plan under Section 7310(b)(12). Policies for reasonable modifications and auxiliary aids and services are not mentioned anywhere in the guidelines. The guidelines must require

²³ Joint Statement of the U.S. Department of Housing and Urban Development and the U.S. Department of Justice [on] Reasonable Accommodations under the Fair Housing Act (May 17, 2004), available at: <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.

that Sponsors adopt policies and procedures for providing reasonable accommodations, reasonable modifications, and auxiliary aids/services for effective communications, and that those policies be consistent with federal guidance like the HUD-DOJ Joint Statement on Reasonable Accommodations,²⁴ the HUD-DOJ Joint Statement on Reasonable Modifications,²⁵ and the DOJ's technical assistance on effective communications.²⁶ (We note that there is some variation in the use of the terms "reasonable modification" and "reasonable accommodation" across different state and federal disability rights laws, but the substantive requirements are consistent.²⁷) The guidelines should also require compliance with program access requirements under the ADA and Section 504, as well as Government Code Section 11135. Those statutes require that programs (not just specific units) be accessible to all individuals with disabilities and that projects eliminate barriers to participation or inclusion for people with disabilities. The guidelines fail to address Sponsors' obligations for program accessibility.

5. We also recommend that, in compliance with Government Code sections 8899.50 et seq., HCD should require that potential Sponsors include with their application an explanation of how their program will affirmatively further fair housing. Applicants should explain how their program would address inequality based on race, disability, and other protected classes, and identify the strategies it will use to promote community integration within the building and in the community. It should also include supporting evidence of the strategies' effectiveness if available. Oddly, the 2022 guidelines added "affirmatively furthering further housing" as a defined term in Section 7301, but appear not to use the term anywhere in the guidelines. We assume this is an oversight and that the AFFH requirement will be incorporated into the guidelines beyond the definitions section.

²⁴ Id.

²⁵ Joint Statement of the U.S. Department of Housing and Urban Development and the U.S. Department of Justice [on] Reasonable Modifications under the Fair Housing Act (March 5, 2018), available at: https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf

²⁶ ADA Requirements: Effective Communications, U.S. Department of Justice (January 31, 2014), available at: <https://www.ada.gov/effective-comm.htm>.

²⁷ See HUD's explanation of the variations in terminology across federal laws: https://www.hud.gov/program_offices/fair_housing_equal_opportunity/reasonable_accommodations_and_modifications and 2 C.C.R. 12176(a), (b) for the definitions of these terms under FEHA.

2. **Subsection (b) Americans with Disabilities Act and Accessibility**

As an initial comment, this subsection is titled “Americans with Disabilities Act and Accessibility” but omits citations to the relevant ADA provisions that apply, as well as citations to laws other than the ADA that also apply to architectural accessibility. This section should be renamed “Physical Accessibility Requirements” and include a complete list of all applicable laws.

Additionally, while the introductory paragraph on compliance with all laws is correct and appreciated, and accurate, it is insufficient guidance for developers and is not sufficient to ensure compliance. While we greatly appreciate HCD’s adoption of strong requirements for percentages of Accessible Housing Units, more is necessary for legal compliance. We provide more detailed comments below.

a) **Subsection 7315(b)(1) “New Construction Projects”**

We concur that all new projects should comply with Chapters 11A and 11B of the California Building Code. However, that is only one set of codes that is legally applicable to these projects. There are other equally applicable federal and state accessibility requirements. Neither CBC Chapter 11A nor Chapter 11B are fully consistent with the current ADA requirements in the 2010 ADA Accessibility Guidelines (ADAAG). Additionally, neither the CBC nor the ADA requirements are fully compliant with HUD requirements under Section 504 of the Rehabilitation Act. In addition, California Fair Employment and Housing Act (FEHA) sections 12955.1 (general accessibility) contain some specific requirements, as does FEHA section 12955.9 and California Government Code Section 51.2-51.4 (senior housing, additional requirements, see our early comments specifically on 51.2(d)(4) and (6)). All HCD funded units *must legally* comply with *all* of these requirements.

A blanket requirement to comply with all applicable laws is insufficient because we know from broad experience that there is significant confusion among developers, contractors, architects, and code agencies about which laws apply. The program guidelines should provide clarity to recipients, developers, and their architects and builders of the full range of

requirements so that there is no confusion about accessibility requirements, and to protect against liability for both HCD and projects for noncompliance.

In addition, all of these obligations apply both to new construction projects AND rehabilitation projects, not just new construction projects. In order to be legally compliant with applicable laws, and to withstand any HUD investigation, HCD *must make it explicit* in Section 7315(b)(1) that compliance with *all* of these laws is required.

Therefore, this section should be retitled to “Required Accessibility” and replaced with the following:

(b) All projects shall adhere to all of the following accessibility requirements:

- (1) Chapters 11A and 11B of the California Building Code;
- (2) The Americans with Disabilities Act, as amended, (42 U.S.C. 12131 et seq.) and its Title II and Title III regulations at 28 C.F.R. Part 35 and 36; Including the 2010 Standards for Accessible Design (“2010 Standards”) as set out in 28 C.F.R Section 35.151 et seq.), and the accompanying Appendices. See U. S. Department of Justice Information and Technical Assistance on the ADA, https://www.ada.gov/2010ADASTandards_index.htm;
- (3) The Federal Fair Housing Act, as amended by the Fair Housing Amendments Act, (42 U.S.C. 3601 et seq.) and its regulations at 24 C.F.R. Part 100; particularly 24 C.F.R. Section 100.205, 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;
- (4) Section 504 of the Rehabilitation Act (29 U.S.C. 794 et seq.) and the implementing HUD regulations at 24 C.F.R. Part 8; particularly 24 C.F.R Sections 8.4(d), 8.22-8.23, 8.26, 8.27, and 8.32. Section 8.32 incorporates the Uniform Federal Accessibility Standards (UFAS). Compliance with 8.32 can be

accomplished by complying with either the UFAS standards referenced in Section 8.32 or HUD's "Alternative Accessibility Standards" ("Deeming Memo" or "Alternative Standards") set out in HUD's notice at 79 Fed. Reg. 29,4671 (May 23, 2014), when used in conjunction with: the new construction requirements of 24 C.F.R. part 8, including 24 C.F.R. § 8.22; and the new construction requirements of 28 C.F.R. part 35, including the 2010 Standards for Accessible Design as defined in 28 C.F.R. § 35.104 and as applied to public entities (excluding any elevator exceptions);

(5) As applicable, the Unruh Act's requirements for senior housing (California Civil Code 51.2-51.4); and

(6) California Fair Employment and Housing Act (FEHA) general accessibility requirements (California Government Code 12955.1) and specific requirements for senior housing (California Government Code 12955.9). All Senior Projects must comply with Civil Code Section 51.2(d)(4): in order to qualify as Senior Housing: "Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps." Senior Projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators."

(7) The Project must meet the following minimum percentages of Accessible Housing Units, subject to the limited exemptions allowed below:

(i) In new construction, not senior, projects: 15% Housing Units with Mobility Features and 10% Housing Units with Hearing/Vision Features;

(ii) In rehabilitation projects, not senior projects: 10% Housing Units with Mobility Features and 4% Housing Units with Hearing/Vision Features;

(iii) New construction senior projects: 50% Housing Units with Mobility Features and 10% Housing Units with Hearing/Vision Features; and

(iv) Rehabilitation senior projects: 25% Housing Units with Mobility Features and 4% Housing Units with Hearing/Vision Features.

Percentage requirements shall be calculated based on the entire number of units in the building and should be rounded up to the nearest whole number.

We note that there is a great deal of consistency among these statutes, so compliance with all of them is readily achievable.

b) Subsection 7315(b)(2) Percentages of Accessible Housing Units

We greatly appreciate HCD's commitment to physical accessibility demonstrated by adopting the requirement of 15% Housing Units with Mobility Features and 10% Housing Units with Hearing/Vision Features in new construction across all programs covered by the guidelines, as set out in Section 7315(b)(2), which is also consistent with TCAC standards. The importance of this to people with disabilities cannot be underestimated. As noted above, just in the City of Los Angeles alone, as of November 30, 2021 there were more than 27,000 people on the City's waitlist and transfer lists for accessible units. HCD's recent Analysis of Impediments more fully describes the need.

But Subsection 7315(b)(2) still omits several key requirements, including:

- a. Accessible Housing Unit standards for rehabilitation projects: There is no mention of these in the guidelines. We urge HCD to adopt a standard of 10% Housing Units with Mobility Features and 4% Housing Units with Hearing/Vision Features for rehabilitation projects, which is also consistent with TCAC current standards, and
- b. Accessible Housing Unit standards for Senior Projects: We urge HCD to adopt explicit standards that are consistent with TCAC standards for Senior Projects, including 50% Housing Units with Mobility Features in new construction and 25% Housing Units with Mobility Features in rehab projects, in addition to the requisite Housing Units with Hearing/Vision Features and other specific requirements,

including those relating to the specific California statutory requirements. In section 7302, HCD has already indicated an intent to use the TCAC standards for Senior Projects. However, because this is not also referenced in Section 7315(b)(2), it creates confusion. We recommend you simply incorporate into 7315(b)(2) the exact percentage and other requirements for Senior Projects, including some of the incentives.

We understand that HCD seeks consistency with the TCAC regulations where possible, and we concur that consistency is important in terms of the number of Accessible Housing Units and related requirements. Therefore, we support using the same requirements for number of Accessible Housing Units.

However, HCD should not simply incorporate or cross reference TCAC standards for many reasons, as follows:

- a. Incorporation creates some confusion, because there are some differences between the TCAC regulations and certain provisions in these proposed guidelines (which can easily be addressed in these guidelines while still ensuring full compliance with existing TCAC regulations).
- b. It is particularly confusing to incorporate TCAC in Section 7302 and then adopt specific standards and other construction related requirements in Section 7315. We recommend that these guidelines simply delete the reference to TCAC regulations in Section 7302 and instead in Section 7315 adopt the direct language that is in the TCAC regulations where applicable and appropriate, as it has done in part in 7315(b)(2).
- c. As we have noted in a number of comments on the TCAC regulations, their regulations are not in compliance with federal and state accessibility laws in key provisions. Therefore, incorporation by reference will just place HCD out of compliance as well. This is particularly true in: 1) the failure to require compliance with all applicable standards (as just discussed), and 2) the discussion of exemptions of accessibility standards, discussed more fully below.

- d. TCAC regulations fail to address the appropriate way to determine the number of accessible units required. TCAC's percentage requirements only apply to "low-income units," whereas the federal standards apply to all units in a building. The number of units that must be accessible under each of these standards will vary depending on the composition of the building. HCD should be specific about how the Accessible Housing Unit count is determined. See discussion below.

Proper Determination of Unit Counts.

We urge HCD to calculate the percentage of required Accessible Housing Units based on all units in the building (including the manager's unit), for maximum accessibility and ease of applications. Furthermore, HUD requires any count to be rounded up to the next highest whole number, and HCD should do the same.

If HCD decides to apply the percentage of required Accessible Housing Units only to the Restricted Units, it must make it explicit to developers that such compliance will not automatically satisfy the federal requirements. The requirements for the number of Accessible Housing Units under both the California Building Code and the ADA is calculated based on to the total number of all units in a building, including the manager's units. Therefore, if HCD decides to apply a different standard, the number of Accessible Housing Units under each of these standards will vary depending on the composition of the building. In some instances, compliance with the HCD percentage requirements in Restricted Units may mean that additional units are required to comply with the ADA and the CBC. While we urge HCD to apply its requirements to all units, for simplicity and as a matter of good policy, if it does not it still will need to require compliance with the ADA and the CBC based on the entire number of units in the project.

Exemptions from Accessibility Percentage Requirements.

As noted above, in Section 7302(d), the guidelines state: "Exemption requests, as provided for in TCAC regulations, must be approved by the Department." This section raises a number of troubling issues. As noted above, we recommend against incorporating TCAC regulations by reference. The sentence should be removed in Section 7302 and any

exemption requests should be addressed in Section 7315(b), in accordance with the following comments.

First, TCAC does not allow exemptions of any accessibility requirements in new construction projects. Section 7315(b)(2) should make it explicit that HCD will not allow exemptions in new construction projects either. No such exemption exists in any of the applicable statutes. There is also no policy reason to provide such exemptions, because provision of Accessible Housing Units in new construction is readily accomplished.

Second, TCAC allows exemptions of increased accessibility requirements in rehabilitation projects, but the provision is not in compliance with applicable law. It: 1) fails to provide any clear standards, procedures, or reporting for such exemptions, 2) does not make clear that ONLY increased accessibility above the legally required 5% Housing Units with Mobility Features and 2% Housing Units with Hearing/Vision Features can be exempted, not the state and federally required 5% Housing Units with Mobility Features and 2% Housing Units with Hearing/Vision Features, and 3) does not specify that no other accessibility requirements can be waived.

Neither HCD nor TCAC has authority to exempt projects from the statutory requirements for accessibility, including the 5% Housing Units with Mobility Features and 2% Housing Units with Hearing/Vision Features for both new construction and rehabilitation that is found in CBC 11B, the ADA, and HUD 504 regulations.

To the extent that HCD wishes to provide exemptions in rehabilitation projects for Accessible Housing Units in excess of the statutory minimums, those exemptions are legally required to be narrowly tailored and the MHP guidelines should provide specific provisions concerning the granting of such exemptions. We note that there are already explicit exceptions in the CBC, HUD, and ADA architectural standards for infeasibility in certain situations, and those may provide some guidance to HCD in granting exemptions.

We propose the following language:

The Executive Director may approve an exemption to Accessible Housing Unit requirements exceeding 5% Housing Unit with Mobility

Features and 2% Housing Unit with Hearing/Vision for a rehabilitation project, provided that:

1. No exemptions from accessibility standards shall be granted in new construction projects.
2. In rehabilitation projects, the Executive Director may approve a partial or full exemption to the requirements for the number of Accessible Housing Units *in excess of those required* by the ADA, Section 504, or the CBC Chapter 11B, provided:
 - a. The exemption does not pertain to any accessibility features required by applicable building codes, the CBC, or federal law, including the required minimum 5% Housing Units with Mobility Features and 2% Housing Units with Hearing/Vision Features, and
 - b. The applicant and a qualified CASP architect with experience with federal accessibility standards, or an architect with experience with state and federal accessibility standards, demonstrate that full compliance with requirements that exceed those otherwise required by building codes or state or federal law would be infeasible or create an undue financial and administrative burden. Accessibility must be provided to the maximum extent feasible.
3. All exemptions must be approved in advance by the Executive Director.
4. Information detailing the number, scope, and reasons for individual exemptions must be maintained by the Department.

c) Section 7315(b)(3)

In order to comply with its state and federal statutory requirements, including requirements for AFFH, HCD needs to provide oversight on compliance with all of the legal obligations relating to accessibility. Therefore, we appreciate the adoption of 7315(b)(3) regarding verification, which requires a certification of compliance signed by the borrower and the architect, as well as third party documentation confirming compliance by a

CASp “or someone with demonstrated experience meeting federal accessibility standards.”

Unfortunately, we know from experience, including extensive experience under the settlement in *ILCSC v. City of Los Angeles*, that not all CASps are familiar with federal accessibility requirements and not all architects are familiar with accessibility standards in residential buildings. Therefore, we recommend revising this provision as follows:

Compliance and Verification: Prior to loan closing, the Sponsor shall provide a certification of compliance, signed by the Borrower and the project architect, as well as third party documentation confirming compliance by a Certified Access Specialist (CASp) [who has demonstrated experience meeting federal accessibility standards](#) or [an architect](#) with demonstrated experience meeting [state and](#) federal accessibility standards.

We also encourage HCD to request a similar certification upon *completion of construction*. Many local government building, codes, housing, and planning departments remain unfamiliar with residential accessibility requirements, particularly in buildings with public funds, and we have seen numerous situations where changes during construction render buildings inaccessible.

d) Section 7315(b)(4). Preferences for Accessible Units.

We are very pleased to see that the language of this section reflects the obligation of existing projects to provide these preferences. We strongly support this part of the subsection.

We recommend a minor revision to subsection (4) on occupancy of Accessible Housing Units. Using the term “preference” in this section will create ambiguity about whether these provisions are required. We recommend that HCD revise the language of subsection (4) to quote directly from 24 C.F.R. section 8.27, which does not use the term “preference.” We also encourage HCD in subsection (4)(B)(i) to require that the agreement to relocate to a non-Accessible Housing Unit be memorialized in the lease or a lease addendum. Without a lease requirement, enforcement of this requirement will be difficult. It could result

in Accessible Housing Units being occupied indefinitely by tenants who do not need the unit's accessibility features, while those who do need those features are left without accessible housing.

We note that 7302(d), the TCAC consistency requirement, also creates indirect conflicts with 7315(b)(4), and neither of these sections fully complies with 24 C.F.R. section 8.27 on priorities for occupancy of Accessible Housing Units. We encourage you to adopt in Section 7315(b)(4) the exact language of 24 C.F.R. section 8.27(a)(1) as written, with the exception of substituting "disability" for "handicap" (as you did) since "handicap" is archaic and offensive.

Consistent with these recommendations, our proposed subsection (b)(4) would read:

(A) All new and existing projects with Accessible Housing Units shall adopt suitable means to assure that information regarding the availability of Accessible Housing Units reaches eligible individuals with disabilities, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. Such information shall be included in marketing plans. To this end, when an Accessible Housing Unit becomes vacant, before offering such unit to an applicant who does not need the features of the unit, the Project shall offer such unit:

- (i) First, to a current occupant of another unit of the same project, or comparable projects under common control, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists;
- (ii) Second, to an eligible applicant on the waiting list having a disability requiring the accessibility features of the vacant unit; then
- (iii) Third, conduct outreach for a reasonable period of time to appropriate sources serving the disability community.

(B) If no applicant meeting the criteria in subsection (A) is available, the Accessible Housing Unit may be offered to a tenant or applicant who does not need the unit's accessibility features. When offering an Accessible Housing Unit to a tenant or applicant not having disabilities requiring the accessibility features of the unit, the Sponsor shall require the applicant to agree to move to a comparable non-Accessible Housing Unit when available. This agreement shall be incorporated in the lease or a written lease addendum.

e) Add New Section 7315(b)(5). Distribution of Accessible Units

Lastly, we recommend that the language currently in Section 7302(f)(1) on distribution of Accessible Housing Units be moved to this section with the other accessibility requirements and revised to accurately reflect the language and requirements of 24 C.F.R. Section 8.26. (See comments on Section 7302(f)(1), which currently blends obligations for nondiscrimination and integration with the standards applying to the location of accessible units.) We recommend the following language, which tracks Section 8.26 but is a little more readable:

(5) Accessible Housing Units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that an individual with disabilities has a choice of living arrangements that is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

Extra Points

HCD may also wish to award extra points to projects that provide additional accessibility features *beyond the baseline requirements and CTCAC percentages*. See our comments on the Scoring Addendum.

B. Second Section 7315. Relocation Requirements

Subsections (a) and (b) should require compliance with the UMR's restrictions on demolition at 25 C.C.R. 8302, as well as with both state

relocation law and the Federal Uniform Relocation Assistance and Real Property Acquisition Act, 49 C.F.R. Part 24, including Appendix A to Part 24. It should make clear that relocation requirements for notice and benefits apply to both temporary and permanent relocations, which is particularly important in rehabilitation projects where tenants may be temporarily displaced. While we appreciate the provisions in subparagraphs (c) and (d), they are not sufficient to ensure that households have the right of re-entry and are entitled to planning, notice, and benefits. (See Appendix A of the federal regulations.)

This section should also require compliance with any local ordinances on relocation that apply in the jurisdiction where the project is located.

C. Section 7316. Construction Requirements

For consistency, we recommend that HCD include the construction requirements listed in Section 7315(b) as an objective and obligation in this section. A provision in this section that the requirements for accessible construction and compliance with the provision on architectural standards will reduce the likelihood of Sponsors overlooking those requirements and ensure that construction contracts include provisions relating to accessibility requirements. Such requirements should be incorporated into construction standards by adding new subsection (f):

“(1) The Sponsor will ensure that the project complies with all of the following accessibility requirements:

(a) Chapters 11A and 11B of the California Building Code;

(b) The Americans with Disabilities Act, as amended (42 U.S.C. 12131 *et seq.*), its Title II and Title III regulations at 28 C.F.R. Part 35 and 36, including the 2010 Standards for Accessible Design (“2010 Standards”) as set out in 28 C.F.R Section 35.151 *et seq.*;

(c) The Federal Fair Housing Act, as amended by the Fair Housing Amendments Act (42 U.S.C. 3601 *et seq.*) and its regulations at 24 C.F.R. Part 100; particularly 24 C.F.R. Section 100.205, 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;

(d) Section 504 of the Rehabilitation Act (29 U.S.C. 794 et seq.) and the implementing HUD regulations at 24 C.F.R. Part 8; particularly 24 C.F.R Sections 8.4(d), 8.22-8.23, 8.26, 8.27, and 8.32. Section 8.32 incorporates the Uniform Federal Accessibility Standards (UFAS). Compliance with 8.32 can be accomplished by complying with either the UFAS standards referenced in Section 8.32 or HUD's "Alternative Accessibility Standards" ("Deeming Memo" or "Alternative Standards") set out in HUD's notice at 79 Fed. Reg. 29,4671 (May 23, 2014), when used in conjunction with: the new construction requirements of 24 C.F.R. part 8, including 24 C.F.R. § 8.22; and the new construction requirements of 28 C.F.R. part 35, including the 2010 Standards for Accessible Design as defined in 28 C.F.R. § 35.104 and as applied to public entities (excluding any elevator exceptions); and

(e) California Fair Employment and Housing Act (FEHA) general accessibility requirements (California Government Code 12955.1).

(f) Senior housing developments must also comply with the Unruh Act's requirements for senior housing (California Civil Code 51.2-51.4) and FEHA's specific requirements for senior housing (California Government Code 12955.9). All Senior Projects must comply with Civil Code Section 51.2(d)(4): in order to qualify as Senior Housing: "Access to all common areas and housing units within the development shall be provided without use of stairs, either by means of an elevator or sloped walking ramps." Senior Projects with elevators must comply with CBC Chapter 11(B) accessibility requirements for elevators.

(2) The building meets the following minimum percentages of Accessible Housing Units, subject to the limited exemptions allowed above:

- (A) In new construction, not senior, projects: 15% Housing Units with Mobility Features and 10% Housing Units with Hearing/Vision Features;
- (B) In rehabilitation projects, not senior projects: 10% Housing Units with Mobility Features and 4% Housing Units with Hearing/Vision Features;
- (C) New construction senior projects: 50% Housing Units with Mobility Features and 10% Housing Units with Hearing/Vision Features; and
- (D) Rehabilitation senior projects: 25% Housing Units with Mobility Features and 4% Housing Units with Hearing/Vision Features.

Percentage requirements shall be based on all units in the building and should be rounded up to the nearest whole number.

(3) Consistent with 24 C.F.R. 8.26 and Section 7315(b)(5) above, the Accessible Housing Units are, to the maximum extent feasible and subject to reasonable health and safety requirements, distributed throughout the project and available in a sufficient range of sizes and amenities so that the choice of living arrangements for a person with a disability is, as a whole, comparable to that of people without disabilities who are eligible for housing at the same project.

V. Article 4. Application Procedures

A. Section 7317(b)(5). Application Process – Set Asides

We are extremely concerned about this provision, and similar language in the Consolidated Scoring Appendix, that HCD is proposing to use unspecified set asides. We understand that some set-asides are statutory (rural and geographic set-asides for example.) However, the nature, scope, and qualifying criteria for any set-asides must be part of these guidelines. Otherwise there is a serious risk that projects serving people with disabilities, as well as other populations, will be highly disadvantaged. It is impossible to tell from these guidelines how the definitions, program descriptions, and scoring system will intersect with any such set-asides. A full description of the set asides and their interaction with the Scoring *must*

be included in the guidelines and made available for public comment prior to implementation. It is not adequate to simply include them in the NOFA, with its limited opportunity (if any) for comment, especially since at that point there is no opportunity to address problems in the guidelines that relate to the set-asides.

We appreciate that there may be circumstances where set-asides are appropriate (such as particular funding appropriations). But not only is transparency and the opportunity to comment critical for any such set-asides, but is very difficult to tell how all the various criteria, scoring, and other factors will impact decision making. Any set-asides must be part of that discussion, *in advance of their designation*.

VI. Article 5. Operations

A. Section 7320. Scoring

We appreciate the effort to consolidate scoring for all programs for ease of application. We strongly support the high priority established for serving the lowest income households. However, we are very concerned about a number of provisions of the Consolidate Scoring Appendix and its impact on serving individuals with disabilities, and Special Needs Populations and Projects in particular. Please see our separate comments on the Consolidated Scoring Appendix.

We encourage HCD to add some additional scoring points for projects that provide accessibility in excess of the required minimums, since accessibility is a serious identified local housing need, as demonstrate by the over 27,000 households in the City of Los Angeles on waiting and transfer lists for Accessible Housing Units. The additional points could be in lieu of some of the current points under cost containment or under the catch-all category in subsection (e)(Adaptive Reuse/Infill/Proximity to Amenities/Sustainable Building Methods). These points could be awarded for things like additional accessibility features that incorporate principles of universal design, such as those listed at 4 C.C.R. 10325(c)(8)(B), or additional Accessible Housing Units. This approach would be consistent with the goals of the Master Plan for Aging that apply to HCD. It is an approach taken by both the City and the County of Los Angeles, who have added select increased accessibility features as either requirements (county) or bonus points (city). (See

Attachment A for suggested language on awarding points for additional accessibility features.) Awarding additional points for increased accessibility would fulfill the recommendations and action steps HCD identified in its 2020 Analysis of Impediments to Fair Housing Choice to address Impediment #10: Insufficient Accessible Housing Stock. And, it would help meet HCD's obligation under HSC section 50676.7(c) to address the most serious identified local needs.

B. Section 7321²⁸. Legal Documents

We appreciate HCD revising Section 7321 to reflect the requirements of the UMR and MHP regulations. We recommend that subsection (a)(13) also require compliance with any local relocation laws that apply to the jurisdiction, as several cities have these requirements.

Both subsection (a) and (b) should include greater specificity for compliance with fair housing laws. Specifically, the agreements must explicitly require compliance with:

- (1) the Americans with Disabilities Act, as amended, (42 U.S.C. 12131 et seq.) and its Title II and Title III regulations at 28 C.F.R. Part 35 and 36;
- (2) The Fair Housing Act, amended by the Fair Housing Amendments Act, (42 U.S.C. 3601 et seq.) and its regulations at 24 C.F.R. Part 100;
- (3) Section 504 of the Rehabilitation Act (29 U.S.C. 794 et seq.) and the regulations at 24 C.F.R. Part 8;
- (4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its regulations at 24 C.F.R. Part 1;
- (5) the Fair Employment and Housing Act (Gov't Code 12900 et. seq.) and its regulations at 2 C.C.R. section 12005 et seq.;
- (6) the Unruh Civil Rights Act (Civil Code section 51 et. seq.);

²⁸ There are two sections labeled 7321 (Performance Deadlines and Legal Documents). Legal Documents should be renumbered 7322.

(7) Government Code section 11135; and

(8) the Disabled Persons Act (Civil Code section 54 et. seq.)

The agreements should also specifically identify by address (if more than one site), by unit number, and by type (Mobility or Hearing/Vision) each of the Accessible Housing Units in the project with Mobility or Hearing/Vision Features. This is critical to enable HCD to meet its reporting and compliance obligations. The agreements should set out the obligation to comply with the marketing and leasing obligations attached to the Accessible Housing Units.

Incorporating these requirements into the agreements will make it easier for HCD to obtain the information it needs to certify its fair housing compliance and AFFH obligations to HUD. (See our comments below on Reporting in Section 7325). DRC can provide sample language from regulatory agreements in use by the City of Los Angeles.

C. Section 7324. Management and Maintenance

This section appears to model the requirements described in the MHP regulations on Management and Maintenance (25 C.C.R. 7324), but it omits the requirement of a Supportive Services plan for “projects serving Special Needs Populations and/or providing special services to the general tenant population” (25 C.C.R. 7324(d)(13)). That requirement should be included in the guidelines. The guidelines should also expressly require that the management plan comply with the UMR requirements on tenant selection (25 C.C.R. 8305) and rental agreements and grievance procedures (25 C.C.R. 8307), but note that the UMR’s provisions on “good cause” for eviction in 25 C.C.R. 8307 are subject to the heightened requirements of the Tenant Protection Act (Civil Code section 1946.2 et seq.) and the FEHA regulations on reasonable accommodations in unlawful detainer actions (2 C.C.R. 12176(f)(8)). The management plans for Special Needs Projects must also comply with WIC section 8255.

Additionally, subsection (b) on the Sponsor’s responsibility for repair and maintenance should expressly include responsibility for maintaining accessibility features and responsibility for providing reasonable

modifications to residents with disabilities. Section 7324(b) should be modified as follows:

The sponsor is responsible for all repair and maintenance functions of the Rental Housing Development, including ordinary and routine maintenance, replacement of capital items, [repair and maintenance of accessibility features, provision and maintenance of accessibility features provided as a reasonable modification to a resident with a disability](#), and extraordinary and/or unforeseen repairs [...].

Lastly, the management plan should include a description of the Sponsor's policies and procedures for reasonable accommodations; reasonable modifications; auxiliary aids and services for effective communications; and marketing, matching, and leasing Accessible Housing Units. These policies and procedures must comply with the fair housing and non-discrimination requirements of Section 7315.

D. Section 7325. Reporting

To ensure compliance with the fair housing requirements discussed above, HCD must require all Sponsors to annually submit certifications of compliance with the specified laws. HCD should further require that Sponsors maintain a copy of all documents on which the certification of compliance is based, and each of those documents should be subject to auditing. This should include, at minimum, logs and records of all reasonable accommodations, reasonable modifications, and auxiliary aids and services that were requested by residents and the outcome of each request.

HCD must also require all Sponsors to report data on the occupancy rates of the Accessible Housing Units in each project, including whether the units are occupied by individuals with disabilities who need the specific features of the unit. Sponsors must also report on the methods used to market and match Accessible Housing Units to residents who need those particular features. Reporting on this data will be easier if HCD requires that Sponsors affirmatively identify these units at the outset. Without this reporting, it's unclear what data HCD would use to prove its compliance with federal fair housing laws when it certifies such compliance to HUD.

We recommend that HCD revise Section 7325 as follows:

(a) No later than 90 days after the end of each Project fiscal year, the Sponsor shall submit the following:

(1) an independent audit [...] [no change];

(2) a complete annual compliance report, including tenant demographics pursuant to Department defined reporting requirements;

(3) A certification that the Project is in compliance with all of the following:

(i) the Americans with Disabilities Act, as amended, (42 U.S.C. 12131 et seq.) and its Title II and Title III regulations at 28 C.F.R. Part 35 and 36;

(ii) The Fair Housing Act, amended by the Fair Housing Amendments Act, (42 U.S.C. 3601 et seq.) and its regulations at 24 C.F.R. Part 100;

(iii) Section 504 of the Rehabilitation Act (29 U.S.C. 794 et seq.) and the regulations at 24 C.F.R. Part 8;

(iv) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its regulations at 24 C.F.R. Part 1;

(v) the Fair Employment and Housing Act (Gov't Code 12900 et. seq.) and its regulations at 2 C.C.R. section 12005 et seq.;

(vi) the Unruh Civil Rights Act (Civil Code section 51 et. seq.);

(vii) Government Code section 11135, and regulations promulgated under Section 11135; and

(viii) the Disabled Persons Act (Civil Code section 54 et. seq.)

and

(4) any changes to the Supportive Services plan or management plan since the last Department approval.

(b)[renumbered] The Sponsor must maintain a record of all documents on which its certification of compliance in subsection (a)(2), above, is based. At minimum, this includes records of all of the following:

(1) All requests submitted by residents for a reasonable accommodation, reasonable modification, or auxiliary aid or service; the Sponsor's decision whether to grant the request; and the basis for the Sponsor's decision;

(2) The unit number of each Accessible Housing Unit in the project, whether it is a Housing Unit with Mobility Features or a Housing Unit with Hearing/Vision Features, and whether each unit is occupied by a person who needs the accessibility features of the unit;

(3) Methods used by the Sponsor to market Accessible Housing Units and match them to occupants in need of the Accessible Housing Unit's particular accessibility features;

(4) Waiting and Transfer lists for Accessible Housing Units;

(5) Copies of lease provisions or lease addenda for tenants in Accessible Housing Units who do not need the unit's accessibility features (pursuant to Section 7315 above); and

(6) Eviction rates (including the number of unlawful detainers filed, writs of possession issued, and notices to quit served).

Conclusion

We reiterate our appreciation to HCD for revising its program guidelines to include significant percentages of Accessible Housing Units across all project types. We cannot overstate the impact that will have on people with disabilities in need of affordable, accessible housing. We trust that HCD will continue to revise its guidelines to address other pressing fair housing issues, fulfilling its obligation to affirmatively further fair housing. We reiterate our request that HCD release a revised draft of the guidelines for public comment before finalization. As always, we are available to provide clarification and respond to any concerns you may have about our suggestions. We thank you for your attention to these comments.

Sincerely,

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