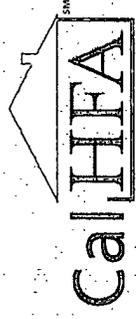


Financing Agenda Item

- Resolution Amending Bond Authorization For The Purpose Of Financing Loans In Connection With The Bay Area Housing Plan Resolution 07-28



Affordable Housing is our Business

Resolution Amending Bond Authorization For The Purpose of Financing Loans in Connection With The Bay Area Housing Plan Resolution 07-28

- **Resolution 07-28 would amend Resolution 06-06 adapted January 12, 2006 as follows:**
 - **Authorize an extension for the issuance of bonds until calendar year 2009**
 - **Authorize the use of the Bay Area Housing Program Bonds Indenture (see next slide)**
 - **State Department of Developmental Services has extended the timeline for closure of the Agnews Development Center**
 - **Anticipate issuing bonds in December 2007, and spring or summer 2008**
-

Resolution Amending Bond Authorization For The Purpose of Financing Loans in Connection With The Bay Area Housing Plan Resolution 07-28 (cont.)

- **Bay Area Housing Program Bonds Indenture**
 - **Limited obligation of the Agency**
 - **To be used exclusively for purposes of the Bay Area Housing Program**
 - **Expecting preliminary credit rating approval from rating agencies in September 2007**
-

Financing Reports

- Recent Bond Sales
 - Multifamily Bonds
 - Single Family Bonds
- Variable Rate Bonds and Swaps

Recent Bond Issues

<u>Date of Issue</u>	<u>Bond Series</u>	<u>\$ Amount</u>
7/12/07	Multifamily Housing Revenue Bonds III 2007 Series B	\$16,630,000
8/08/07	Home Mortgage Revenue Bonds 2007 Series F, G & H	\$350,000,000

New Multifamily Bonds

- \$16,630,000 MFHRB III, 2007 Series B
- All tax-exempt
- Auction Rate, Insured Bonds
 - \$12,630,000 swapped to fixed rate
- Funding for 4 projects

New Single Family Bonds

- \$350 M HMRB 2007 Series FGH
- \$48 M issued as insured fixed-rate bonds
- \$202 M issued as uninsured fixed-rate bonds
- \$100 M issued as variable rate demand obligations
 - Swapped to fixed
- Proceeds for purchase of approximately 1,050 new loans

Report on Variable Rate Bonds and Swaps

Variable Rate Debt as of September 1, 2007

(\$ in Millions)

	Tied Directly to Variable Rate Assets	Swapped to Fixed Rate	Not Tied to Variable Rate Loans	Total Variable Rate Debt
HMRB	\$ 2	\$ 3,713	\$ 527	\$ 4,242
MHRB	198	850	49	1,097
HPB	0	35	76	111
DDB	13	0	0	13
TOTALS	\$213	\$ 4,598	\$ 652	\$ 5,463

Types of Variable Rate Debt

(\$ in Millions)

	Auction Rate & Similar Securities	Indexed Rate Bonds	Variable Rate Demand Obligations	Total Variable Rate Bonds
HMRB	\$ 156	\$ 959	\$ 3,127	\$ 4,242
MHRB	392	0	705	1,097
HPB	0	13	111	111
DOB	0	0	0	13
TOTALS	\$ 548	\$ 972	\$ 3,943	\$ 5,463

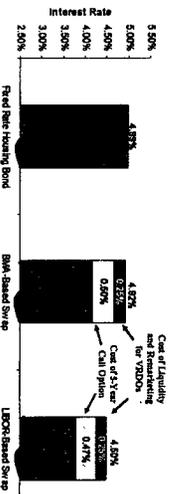
Fixed Payer Interest Rate Swaps

(\$ in Millions)

	Tax-Exempt	Taxable	Totals
HMRB	\$3,100	\$697	\$3,797
MHRB	849	0	849
HPB	35	0	35
TOTALS	\$3,984	\$697	\$4,681

Comparative Costs of Funds for Fixed-Rate Bonds and Synthetic Fixed-Rate Bonds (Variable Rate Bonds Swapped to Fixed)

(All Rates as of August 21, 2007)



BNA-Based Swap: BNA Index + 101%

LIBOR-Based Swap: 64% LIBOR + 24 bps

Financing Reports

- Recent Bond Sales
 - Multifamily Bonds
 - Single Family Bonds
- Variable Rate Bonds and Swaps

Recent Bond Issues

<u>Date of Issue</u>	<u>Bond Series</u>	<u>\$ Amount</u>
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New Multifamily Bonds

- **\$16,630,000 MFHRB III, 2007 Series B**
 - **All tax-exempt**
 - **Auction Rate, Insured Bonds**
 - **\$12,630,000 swapped to fixed rate**
 - **Funding for 4 projects**
-

New Single Family Bonds

- **\$350 M HMRB 2007 Series FGH**
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 - **\$202 M issued as uninsured fixed-rate bonds**
 - **\$100 M issued as variable rate demand obligations**
 - **Swapped to fixed**
 - **Proceeds for purchase of approximately 1,050 new loans**
-

Report on Variable Rate Bonds and Swaps

Variable Rate Debt as of September 1, 2007

(\$ in Millions)

	<u>Tied Directly to Variable Rate Assets</u>	<u>Swapped to Fixed Rate</u>	<u>Not Swapped or Tied to Variable Rate Loans</u>	<u>Total Variable Rate Debt</u>
HMRB	\$ 2	\$ 3,713	\$ 527	\$ 4,242
MHRB	198	850	49	1,097
HPB	0	35	76	111
DDB	<u>13</u>	<u>0</u>	<u>0</u>	<u>13</u>
TOTALS	\$213	\$ 4,598	\$ 652	\$ 5,463

Types of Variable Rate Debt

(\$ in Millions)

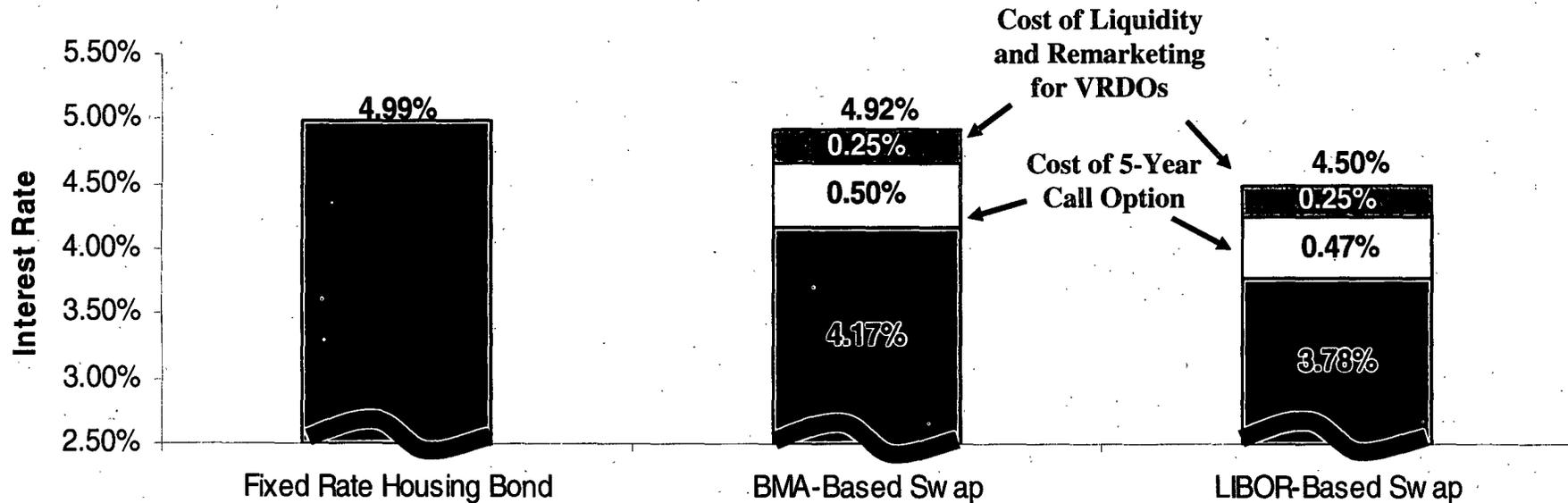
	<u>Auction Rate & Similar Securities</u>	<u>Indexed Rate Bonds</u>	<u>Variable Rate Demand Obligations</u>	<u>Total Variable Rate Bonds</u>
HMRB	\$ 156	\$ 959	\$ 3,127	\$ 4,242
MHRB	392	0	705	1,097
HPB	0	0	111	111
DDB	<u>0</u>	<u>13</u>	<u>0</u>	<u>13</u>
TOTALS	\$ 548	\$ 972	\$ 3,943	\$ 5,463

Fixed Payer Interest Rate Swaps

(\$ in Millions)

	<u>Tax-Exempt</u>	<u>Taxable</u>	<u>Totals</u>
HMRB	\$3,100	\$697	\$3,797
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TOTALS	\$3,984	\$697	\$4,681

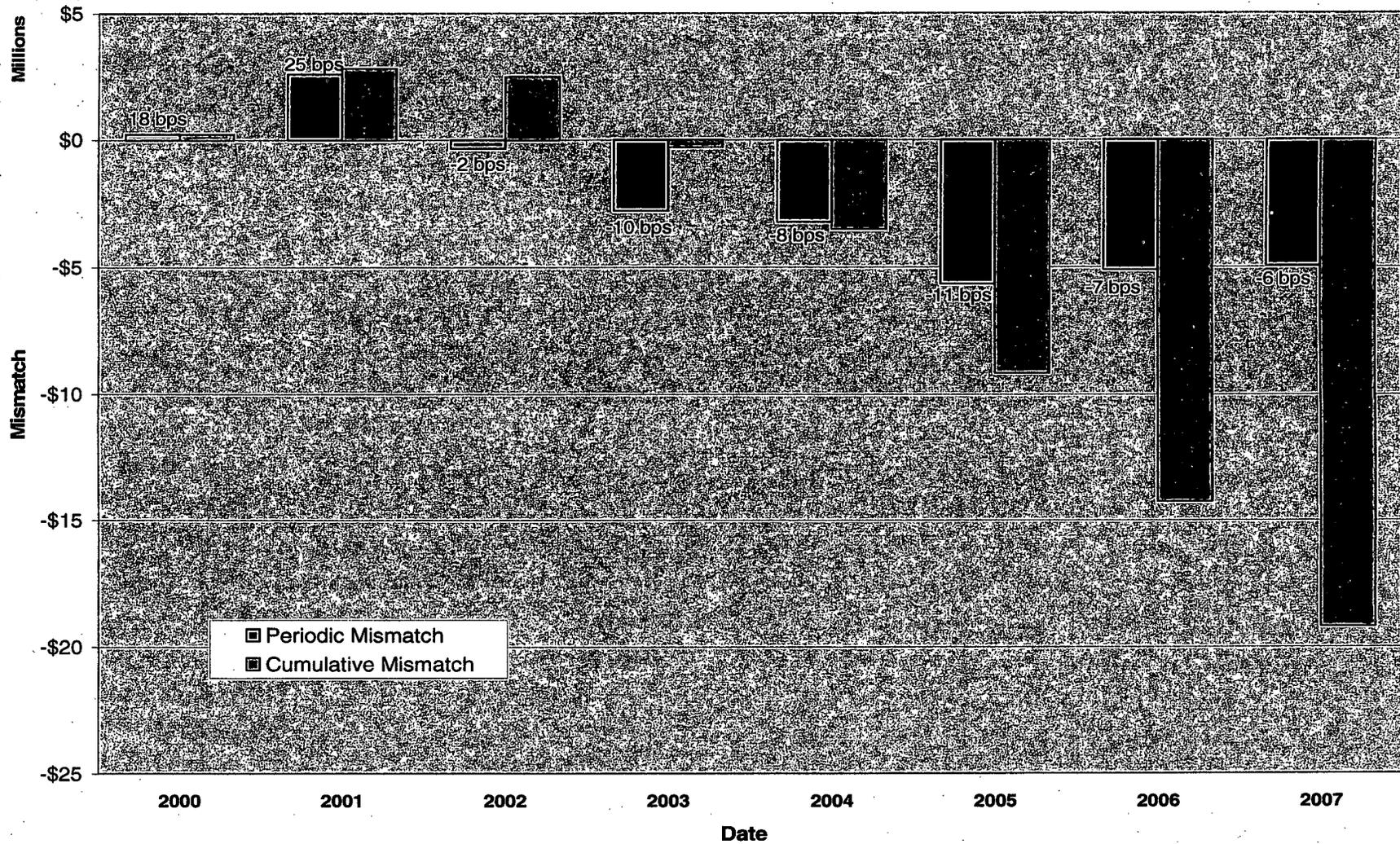
Comparative Costs of Funds for Fixed-Rate Bonds and Synthetic Fixed-Rate Bonds (Variable Rate Bonds Swapped to Fixed) (All Rates as of August 21, 2007)



BMA-Based Swap: BMA Index x 101%

LIBOR-Based Swap: 64% LIBOR + 25 bps

Basis Mismatch through August 1, 2007 All Swaps



PROJECT SUMMARY

PROJECT NUMBER: 04-012-N

Final Commitment Modification

Project: Lion Creek HOPE VI, Phase II
Location: 69th Avenue & Leona Creek Drive

City: Oakland
County: Alameda
Zip Code: 94621

Developer: The Related Companies California
Partner: East Bay Asian Local Development
Investor: MMA Financial

Project Type: New Construction
Occupancy: Family
Total Units: 146
Style Units: Townhomes & Flats
Elevators: Yes
Total Parking Covered: 219
 146

No. of Buildings: 13
No. of Stories: 2 and 3
Residential Space: 136,224 sq. ft.
Office Space: 7,500 sq. ft.
Commercial Space: 0 sq. ft.
Gross Area: 143,724 sq. ft.
Land Area: 173,456 sq. ft.
Units per acre: 37

Permanent Sources of Funds	Original	Update	Rate	Years
CalHFA First Mortgage	\$4,040,000	\$4,040,000	5.90%	40
CalHFA Section 8 Loan	\$0	\$620,000	5.25%	10
CalHFA FAF Second Mortgage	\$730,000	\$730,000	3.00%	40
MHP	\$9,815,000	\$9,815,000	3.00%	55
MHP NSSS	\$500,000	\$500,000	3.00%	55
Oakland Housing Authority HOPE VI	\$7,430,139	\$7,430,139	0.00%	0
Oakland Housing Authority	\$703,620	\$925,402	0.00%	55
AHP	\$645,000	\$645,000	0.00%	35
Income during Construction	\$0	\$0		
GP Equity	\$1,085,986	\$993,939		
Deferred Developer Fee	\$244,739	\$356,061		
Tax Credit Equity	\$20,004,285	\$21,538,970		

Construction Valuation		Appraisal		Value Upon Completion	
Investment Value	\$0	Appraisal Date	August 30, 2007	Est. Restricted Value	\$6,520,000
Loan / Cost	\$0	Cap Rate	7.25%	Perm. Loan / Cost	11%
Loan / Value	\$0			Perm. Loan / Value	83%

CalHFA Fees and Reserve Requirements

CalHFA Loan Fees	Amount	Required Reserves	Amount
CalHFA First Mortgage Loan Fee	\$60,600	CalHFA Operating Expense Reserve	\$75,643
CalHFA Second Mortgage Loan Fee	\$10,950	Rent Up Reserve	\$65,000
CalHFA Third Mortgage Loan Fee	\$3,100	Section 8 Transitional Operating Reserve	\$39,913
Construction Inspection Fee	\$27,000	Repl. Reserve - Per Unit/ Per Yr	\$400

Date: 8/14/2007

Senior Staff Date: 8/20/2007

RESOLUTION 07-20

RESOLUTION APPROVING DISSOLUTION
OF THE COMPENSATION COMMITTEE

WHEREAS, on September 7, 2006, the Board of Directors of the California Housing Finance Agency enacted Resolution 06-16 establishing a Compensation Committee to advise the Board on matters related to the compensation of Agency employees, and

WHEREAS, the Board of Directors enacted a Compensation Committee Charter pursuant to such Resolution 06-16; and

WHEREAS, the Board of Directors now desires that the entire Board of Directors assume the responsibilities established for the Compensation Committee, and;

WHEREAS, the Board of Directors now wishes to dissolve the Compensation Committee;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. Resolution 06-16, establishing a Compensation Committee and approving a charter for such committee, is hereby repealed, and the Compensation Committee is hereby dissolved.
2. Any and all functions previously delegated or assigned to the Compensation Committee shall be the responsibility of the full Board of Directors.

I hereby certify that this is a true and correct copy of Resolution 07-20 adopted at a duly constituted meeting of the Board of Directors of the Agency held on September 12, 2007, at Burbank, California.

ATTEST: _____
Secretary

RESOLUTION 07-21

RESOLUTION MODIFYING PRIOR SALARY CAP RESOLUTION

WHEREAS, on January 1, 2007, amendments to Health & Safety Code section 50909 became effective, directing the Board of Directors of the California Housing Finance Agency (the "Board of Directors") to establish salaries for key exempt managers; and

WHEREAS, on January 18, 2007, the Board adopted Resolution 07-06, establishing salary ranges for certain exempt positions as an aid in setting specific salaries; and

WHEREAS, The Board of Directors thereafter adopted Resolution 07-07, establishing specific salaries for certain exempt managers; and

WHEREAS, on March 8, 2007, the Board adopted Resolution 07-10, amending the salary ranges previously adopted in Resolution 07-06, and establishing salary caps for such positions, and

WHEREAS, the Agency has for an extended time been in the process of recruiting to fill the vacant positions of the Director of Multifamily Programs and the Director of Homeownership Programs; and

WHEREAS, the salary caps previously adopted for the positions of Director of Multifamily Programs and the Director of Homeownership Programs appear to be insufficient to attract candidates of superior qualifications, as required by Health & Safety Code Section 50909,

WHEREAS, the salary survey conducted pursuant to Health & Safety Code Section 50909 permits the establishment of a higher salary cap than that enacted in Resolution 07-10,

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. The Board of Directors modifies the permitted salary caps previously established in Resolution 07-10 for the positions of the Director of Multifamily Programs and the Director of Homeownership Programs, as described below.

RESOLUTION 07-22

RESOLUTION APPOINTING DIRECTOR OF MULTIFAMILY PROGRAMS

WHEREAS, the position of Director of Multifamily Programs of the California Housing Finance Agency ("Agency") is currently vacant; and

WHEREAS, the Agency Board of Directors is authorized to appoint an employee pursuant to California Constitution Article VI, Section 4(e); and

WHEREAS, Health & Safety Code Section 50909 authorizes the Board of Directors to set a salary for the position of Director of Multifamily Programs in an amount reasonably necessary to attract and hold a person of superior qualifications;

WHEREAS, Robert L. Deaner II is well qualified for the position of Director of Multifamily Programs; and

WHEREAS, the Board of Directors wishes to appoint Robert L. Deaner II to the position of Director of Multifamily Programs of the California Housing Finance Agency;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors as follows:

1. Robert L. Deaner II is hereby appointed to the position of Director of Multifamily Programs of the California Housing Finance Agency, at an annual salary of _____

I hereby certify that this is a true and correct copy of Resolution 07-22 adopted at a duly constituted meeting of the Board of Directors of the Agency held on September 12, 2007, at Burbank, California.

ATTEST:

Secretary

To: John G. Morris, Designee of the Chair for the Audit Committee of the Board
of the California Housing Finance Agency

From: Steven A. Nissen and Randall Keen

Date: August 22, 2007

Subject: Report on Unsubstantiated Claim of Conflict of Interest Regarding Board
Member Jack Shine

I. INTRODUCTION

The law firm of Manatt, Phelps & Phillips was retained by the California Housing Finance Agency ("CalHFA" or the "Agency") as a result of a request by the Audit Committee of the CalHFA Board ("Audit Committee") to perform a number of tasks. The Audit Committee asked that we review matters concerning the process of determining compensation for key management, the contracting authority of the Executive Director, and anonymous allegations about the conduct of certain Board members of CalHFA.

This memorandum addresses the specific issue of the Agency's business relationship with Habitat for Humanity and the participation of Habitat volunteer Jack Shine as a member of the Board of CalHFA, and analyzes whether Mr. Shine's dual role as CalHFA Board member and Habitat for Humanity officer is consistent with the law governing the Agency, its employees and its Board.

II. NATURE OF REVIEW

Our review consisted of multiple face to face and telephonic interviews, as well as a review of numerous emails and hard copies of correspondence, memoranda and public announcements concerning the CalHFA Habitat for Humanity Loan Purchase Program. In addition, we researched relevant sections of the Government Code, the Health & Safety Code, judicial opinions, FPPC rulings and Attorney General opinions.

III. SUMMARY OF FINDINGS

While the Agency is subject to general state conflict of interest laws, the statutory framework governing CalHFA both encourages active Board involvement of individuals from the private and nonprofit housing and finance sectors, and creates various safe havens relative to potential conflict of interest activities. Specifically, we found no evidence that Jack Shine's dual role as Board Member of CalHFA and volunteer Chair of the San Fernando/Santa Clarita Habitat for Humanity violated any laws, regulations or codes of conduct. Indeed, the statutory framework governing CalHFA provides specific protections with respect to potential conflicts of interest for uncompensated officers of nonprofit entities such as Habitat for Humanity. Further, there is no evidence that Mr. Shine's Habitat for Humanity affiliate was afforded any special or deferential treatment in the Agency's processing of applications for the Habitat for Humanity Loan Purchase Program. Finally, the evidence clearly indicates that the Habitat for Humanity Loan Purchase Program was the product of CalHFA staff collaboration with numerous Habitat affiliates and not the result of special influence exerted by Mr. Shine.

IV. FACTUAL BACKGROUND

A. The Habitat for Humanity Loan Purchase Program was Created with the Collaborative Efforts of the Habitat Community.

Jack Shine has served as a member of the CalHFA Board since 2002, and has been the Chair of the Audit Committee since its inception in January, 2006. Mr. Shine has also been an uncompensated volunteer member since 1999 of the Board of Directors of the San Fernando/Santa Clarita affiliate of Habitat for Humanity ("Habitat"). He has served as the Chair of the San Fernando/Santa Clarita Habitat affiliate since 2006, likewise in a volunteer capacity.

In an anonymous memorandum dated March 2, 2007, an author(s) self-designated as the Coalition of Concerned CalHFA Employees ("CCCE") asserted that Mr. Shine "prevailed upon TP [Terri Parker]. . . to purchase Habitat loans under the specially created Habitat for Humanity Loan Purchase Program, since he is on a Habitat board." The implication of this anonymous charge was that Mr. Shine's service and conduct as a member of the CalHFA board and a local Habitat board constituted a conflict, as the CCCE memorandum questioned whether the Board was "acting in the best interests" of CalHFA. (Appendix A, ¶ 6). We conclude that this anonymous charge is unfounded and is not supported by either the facts or the law.

Habitat for Humanity is a nonprofit entity, which in part works through a network of separately incorporated nonprofit affiliate Habitat organizations. Habitat has built or rehabilitated more than 225,000 houses around the world, in more than 3,000 communities, through volunteer labor and donations of money and materials. Homeowners, called "partners,"

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invest a significant amount of their own labor into building their Habitat house, as well as the houses of others. Habitat houses are sold to partner families at no profit and financed with affordable loans, with the revenue stream from partners' loan payments used to invest in building additional Habitat houses. The San Fernando/Santa Clarita affiliate is one of fifty-two California affiliates currently listed on Habitat International's website.

As part of an annual process, the CalHFA Board typically considers and approves a five year business plan for the Agency during its May meeting. On May 12, 2005, the Habitat for Humanity Loan Purchase Program was presented to the Board in the context of the Board's review of the business plan. As explained by Linn Warren, the then Director of Multifamily Programs for CalHFA, "when the homes are built, the loans are made by Habitat. We would then buy the loans from Habitat..." (TR., Minutes of the CalHFA Board Meeting, May 12, 2005, p. 170:4-6). The benefit of the program to Habitat is that the participating affiliate receives an immediate lump sum of cash for each loan, which in turn may be re-invested in building more housing.

Prior to the vote, Board member Jack Shine made the following disclosure:

"MR. SHINE: Before we vote, I would just like for the record to let everyone know that I happen to be a member of the board of directors of one of the local affiliates for Habitat for Humanity, and I have been told that it's okay for me to vote because I have no interest in it one way or the other, but I wanted to go on record . . ." (*Id.*, p. 177:24-178:4).

The staff presentation at the May 2005 Board meeting indicates that the Habitat Loan Purchase Program was intended to be a pilot program which, if successful, could be expanded to other nonprofit providers of affordable housing (*Id.*, p. 173:15-174:5).

During the course of our interviews, credit for the origin of the Habitat loan purchase concept was ascribed to more than one source. CalHFA consideration of this program appears to have originated in early 2004, arising out of communications between a representative of the Orange County Habitat affiliate and then CalHFA Chief of Special Lending Programs Doug Smoot and out of contemporaneous suggestions from CalHFA Board member Jack Shine. After the May 2005 CalHFA Board approval of the Five Year Business Plan, a general mail notification was issued to forty-three (43) California Habitat affiliates on May 25, 2005 alerting recipients to the CalHFA "proposal that would allow HFH affiliates to sell a portion of their mortgage portfolio, in order to build more homes," and inviting each interested affiliate to "join in a discussion group that will help work out the specifics of the program." The notification was transmitted by the President and CEO of Habitat for Humanity South Bay/Long Beach, who volunteered for the task working in concert with CalHFA's Doug Smoot. (Appendix B). Mr. Smoot recalls pulling affiliate addresses off the Habitat International's website and following up

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the volunteer email notification with a hard copy letter invitation approximately one week later (Appendix C).

On July 1, 2005, correspondence appears to have been transmitted to all Habitat affiliates that had expressed an interest in the proposed loan purchase program to participate in a discussion group. (Appendix D). The file indicates that various Habitat affiliates and the Habitat Western Regional Support Center were enlisted to forward the information to Habitat colleagues around the State. (Appendix E). Approximately half a dozen representatives attended each of the discussion group meetings, held on July 20, 2005 at the CalHFA Culver City offices and July 21, 2005 at the CalHFA Sacramento offices. Mr. Shine does not recall attending either group discussion; however, a number of his fellow Board members of the San Fernando/Santa Clarita affiliate received a briefing on the proposed program from CalHFA staff on June 16, 2005. In his capacity as a CalHFA Board member, Mr. Shine inquired as to the status of the development of the Habitat program from time to time. (See Appendix F).

In late July, a representative from Habitat's Western States office, working in concert with CalHFA's Smoot, surveyed Habitat affiliates to establish the level of interest and potential amount of loan purchases likely to be requested during the coming year. The responses to the survey were provided to CalHFA on August 12, 2005 (Appendix G), indicating an estimated total of \$11.24 million in likely funding requests. The San Fernando/Santa Clarita Habitat affiliate did not participate in this survey. Instead, toward the end of September 2005, Mr. Shine sought a term sheet with a commitment from CalHFA of \$2.5 million for his Habitat affiliate. Mr. Shine was informed by CalHFA that no commitments were yet available as the design for the program was still under development.

On November 17, 2005, Mr. Shine and attendees of the July discussion groups were invited as "Habitat Loan Purchase Program Advisory Group Members" to a December 2, 2005 meeting in Sacramento "to provide further input so as to finalize the program parameters." (Appendix H). On or about December 21, 2005, the CalHFA Habitat for Humanity Loan Purchase Program was formally announced, along with distribution of the program guidelines and application packages. In her cover letter to California Habitat affiliates, CalHFA Executive Director Theresa Parker thanked "the many Habitat for Humanity participants that voluntarily contributed their time and expertise to help design this program." (Appendix I).

B. No Special Treatment was Provided to Jack Shine or the San Fernando/Santa Clarita Affiliate in the Consideration of Habitat Loan Purchase Applications.

The initial rounds of funding decisions have been completed for 2005/2006 and 2006/2007. The funding results demonstrate convincingly that no special consideration was

given to the San Fernando/Santa Clarita affiliate to the detriment of any other Habitat affiliate. By way of background, the Agency operates the Habitat Loan Purchase Program by entering into what is called a general Mortgage Purchase Agreement after committing to an affiliate, followed by a specific Supplemental Agreement for each set of loans purchased. *Exhibit 1* below depicts the agreements made by the Agency for this program thus far, along with participating affiliate, balance of the loan at time of purchase and actual price paid by CalHFA for the loans. As of July 9, 2007, CalHFA had purchased loans pursuant to the Habitat Loan Purchase Program from four California Habitat affiliates (Calaveras, East Bay, Lake and Shasta Cascade) and given commitments to four others (Golden Empire, Orange County, Greater L.A. and Silicon Valley). The Golden Empire and Orange County affiliates had by July 2007 signed Mortgage Purchase Agreements, while the Greater L.A. and Silicon Valley affiliates had not yet signed any agreements with CalHFA. The Habitat loans purchased to date represent a total balance of \$4,195,263.35, discounted to a purchase cost of \$2,589,235.64.

Exhibit 1
Signed Mortgage Purchase Agreements with Supplemental Agreements* for Habitat for Humanity (HFH) Affiliates (as of July 9, 2007)

HFH Affiliate	Mortgage Purchase Agreement Date	Supplemental Agreement Date	Aggregate of Loan Balances at Time of Purchase	Discounted Price
Calaveras HFH	May 16, 2006	September 13, 2006	\$165,376.00	\$127,354.32
East Bay HFH	June 9, 2006	June 18, 2006 September 1, 2006 September 29, 2006	\$363,595.00 \$825,971.40 \$642,064.48	\$235,522.25 \$487,323.13 \$378,818.04
Golden Empire HFH**	April 2, 2007	n/a	n/a	n/a
Lake HFH	August 18, 2006	September 6, 2006	\$42,803.00	\$29,106.04
Orange County HFH**	June 13, 2007	n/a	n/a	n/a
Shasta Cascade HFH	May 1, 2006	November 21, 2006	\$518,851.43	\$333,050.51
		April 19, 2007	\$819,855.34	\$506,013.33
		GRAND TOTAL†	\$4,195,263.35	\$2,589,235.64

* If completed
 ** Has not yet completed Supplemental Agreements for specific loans
 † Does not include 2 affiliates (Greater LA and Silicon Valley) that have received commitments but have not yet executed either Mortgage Purchase or Supplemental Agreements

As *Exhibit 1* above demonstrates, the San Fernando/Santa Clarita affiliate, with which Jack Shine is associated, has never been issued a commitment by CalHFA, nor has it entered into

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any agreement under the Habitat Loan Purchase Program. While that affiliate did submit an application for funding in the most recent funding round closing on February 2, 2007, the application was ultimately denied because the loans identified for sale to CalHFA were not originated in advance of the specified eligibility date for available funding. We found no evidence that Mr. Shine or the San Fernando/Santa Clarita Habitat for Humanity affiliate was afforded special deference by CalHFA in its review and disposition of that affiliate's loan purchase application.

V. LEGAL ANALYSIS

A. Jack Shine's Role as Board Member of CalHFA and Volunteer Chair of the San Fernando/Santa Clarita Habitat for Humanity is Not Violative of Any Laws.

There are two separate provisions in the California Government Code, at Sections 1090 and 87100, in addition to a common law prohibition on conflicts of interest concerning public officials in California. As discussed below, Mr. Shine has no financial interest in the San Fernando/Santa Clarita Habitat for Humanity affiliate, would not receive any direct or indirect financial benefit from any transaction between the affiliate and CalHFA, and is therefore not subject to either Section 1090 or Section 87100. Even if he had a financial interest in the San Fernando/Santa Clarita Habitat for Humanity affiliate, the Legislature has provided an exemption from Section 1090 for officers of a nonprofit, as long as the interest is disclosed and recorded in the CalHFA records, and Mr. Shine recuses himself from the CalHFA board vote. Similarly, the common law prohibition would not apply to Mr. Shine, because the Legislature's exemption under Section 1090 effectively abrogates the common law prohibition.

In short, Mr. Shine's involvement in the development of the Habitat Loan Purchase Program was consistent with the Legislature's intent that the "representation of varied interest groups on the board shall be deemed essential to obtain information for the development of policy and decisions of the board." Health and Safety Code § 50904; see also § 50902 (Board appointees to represent a variety of interests, including banking, residential building, organized labor, and lower-income rental management).

The application of each of Sections 1090 and 87100, and the common law prohibition on conflicts of interest to Jack Shine's involvement with the Habitat for Humanity Loan Purchase Program is discussed below.

1. Section 1090.

The first general conflict of interest provision under California law, at Government Code Section 1090 *et seq.*, specifically applies only to the making of governmental contracts, and

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forbids a government official from having any financial interest in the making of a government contract. Section 1090 states in part:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

In short, for Section 1090 to govern actions by Mr. Shine, it must be determined whether 1) he is a state officer or employee; 2) whether he has made or would "make" a contract in his capacity as a state officer or employee; and 3) whether he might be "financially interested" in any such contract.

As a member of the CalHFA Board, Mr. Shine is a state officer subject to Section 1090. Accordingly, we address below whether Mr. Shine had a financial interest in the making of a contract when he encouraged the development of the Habitat Loan Purchase Program and later requested a loan commitment for the San Fernando/Santa Clarita affiliate.

As an initial point, CalHFA has not entered into a contract with the San Fernando/Santa Clarita affiliate to date. We are not aware of any court cases that have found a violation of Section 1090 unless and until a contract has actually been executed. Accordingly, without a contract between CalHFA and the San Fernando/Santa Clarita affiliate, there can be no violation of Section 1090. Nonetheless, we address below whether Section 1090 would prohibit or restrict Mr. Shine from involvement in a contract between CalHFA and the San Fernando/Santa Clarita affiliate in the future.

The courts have given a broad definition to "financial interest" under Section 1090, which includes "any financial interest which might interfere with a [public] official's unqualified devotion to his public duty." *People v. Watson* (1971) 15 Cal.App.3d 28, 37 (citing *People v. Darby* (1952) 114 Cal.App.2d 412, 433). However, Mr. Shine does not receive any compensation from the San Fernando/Santa Clarita affiliate (or any other Habitat for Humanity entity), nor does he have any other financial interest in Habitat for Humanity. It therefore appears that Mr. Shine would not have any financial interest in a contract between CalHFA and the San Fernando/Santa Clarita affiliate that would be prohibited by Section 1090. See 88 Ops.Cal.Atty.Gen. 32 (2005) (city council member who is not compensated for services as director of nonprofit would not receive direct or indirect financial benefit from proposed transaction and is therefore not subject to Section 1090).

Even if Mr. Shine had some otherwise prohibited financial interest in a contract between CalHFA and Habitat for Humanity, there are a limited number of expressly defined "remote interests" and "noninterests" that are exempted from Section 1090's general prohibition. Gov.

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Code §§ 1091, 1091.5. These statutory exemptions to Section 1090 are strictly limited to the specified types of interests, and do not apply to other, similar types of interests. 85
Ops.Cal.Atty.Gen. 34.

For example, under Section 1091, an officer is not deemed to be interested in a contract if the officer has only a defined "remote interest" in the contract, as long as 1) the interest is disclosed to the body or board of which the officer is a member, 2) the interest is noted in the agency's official records, and 3) thereafter the "board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest."

One of the defined remote interests under Section 1091(b)(1) is:

That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.¹

Here, Mr. Shine is an officer of the San Fernando/Santa Clarita affiliate, which is a nonprofit corporation. When the Habitat program was first discussed by the CalHFA Board, Mr. Shine disclosed his interest to the Board, and that interest is noted in the CalHFA official records. (TR., Minutes of the CalHFA Board meeting, May 12, 2005, p. 177:24-178:4) If Mr. Shine ever were to be compensated by Habitat or otherwise acquire a financial interest and CalHFA were to enter into a contract with the San Fernando/Santa Clarita affiliate, the Board would need to either authorize, approve or ratify that agreement, and Mr. Shine would need to abstain from voting on that contract action to utilize this exception to Section 1090. As stated above, however, based on facts presently known to us Mr. Shine has no financial interest which requires him to rely on this particular exception to Section 1090.²

¹ The exception at Section 1091.5(a)(8) for a "noncompensated officer of a nonprofit, tax exempt organization" does not seem to apply because that provision requires that the nonprofit "support the functions" of the government agency. While Habitat's mission and CalHFA's mission are consistent with respect to decent affordable housing, Habitat does not "support the functions" of CalHFA. See 88 Ops.Cal.Atty.Gen.32 (2005)..

² Other exemptions to section 1090 were analyzed and determined to be inapplicable. The specific CalHFA exemption at Section 1091.5(a)(13) would not apply to Mr. Shine's involvement with the Habitat loan program, because as currently designed loans from the program cannot "be originated by any lender approved by the agency." The exemption at Section 1091.5(a)(7) for a "nonsalaried member of a nonprofit corporation" would likewise not apply, because the San Fernando/Santa Clarita Habitat affiliate has no members provided for in its articles or bylaws pursuant to California Corporations Code Section 5056(a).

2. Section 87100.

The second general conflict of interest provision under California law, at Government Code Section 87100 *et seq.*, prohibits a public official from making, participating in, or using “his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.” “A public official has a financial interest . . . if it is reasonably foreseeable that the decision will have a material financial effect on” any of the official’s defined financial interests. Cal. Gov. Code § 87103(e).

a. Steps to the Analysis under Section 87100.

There is an eight-step analysis under section 87100:

- 1) Determine whether the person is a “public official;”
- 2) Determine whether the person made, participated in making, or used his or her official position to influence a government decision;
- 3) Identify the person’s economic interests;
- 4) Determine whether the identified economic interests were directly or indirectly involved with the governmental decision;
- 5) For each of the identified economic interests in Step 3, determine the applicable materiality standard;
- 6) Determine whether it is “reasonably foreseeable” that the governmental decision in question will have a “material financial effect” on each of the identified economic interests;
- 7) Determine if the reasonably foreseeable financial effect on any of the economic interests are distinguishable from the effect upon the public generally. If the effect is indistinguishable from that on the public generally, then the person was not excluded from participation in the decision.
- 8) Determine if the person’s involvement was legally required despite the conflict of interest. If involvement was legally required, then the person was not excluded from participation in the decision, despite the conflict of interest.

These steps are addressed below.

(i) Mr. Shine is a "Public Official"

A public official is "a member, officer, employee, or consultant of a state or local government agency" Cal. Gov. Code § 82048. As a CalHFA Board member, Mr. Shine is clearly a public official.

(ii) Making, Participating In, or Attempting to Influence a Government Decision.

A public official "makes a governmental decision" when the official, acting within the authority of his or her position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. Cal. Gov. Code § 87100; 2 C.C.R. § 18702.1. A public official is attempting to use his or her official position to influence a decision before his or her own agency if, for the purpose of influencing the decision, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. Cal. Gov. Code § 87100; 2 C.C.R. § 18702.3.

Mr. Shine's actions in suggesting and encouraging the Habitat Loan Purchase Program, attending a workshop, discussing the matter at a Board meeting, and requesting a loan commitment for the San Fernando/Santa Clarita affiliate all appear to qualify, at least, as attempting to influence CalHFA actions.

(iii) Economic Interests.

There are six types of economic interests under Section 87100:

- 1) A business entity in which the public official has a direct or indirect investment of \$2,000 or more (Gov. Code § 87103(a); 2 C.C.R. § 18703.1(a));
- 2) A business entity in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Gov. Code § 87103(d); 2 C.C.R. § 18703.1(b));
- 3) Real property in which a public official has a direct or indirect interest of \$2,000 or more (Gov. Code § 87103(b); 2 C.C.R. § 18703.2);
- 4) Any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (Gov. Code § 87103(c); 2 C.C.R. § 18703.3);

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- 5) Any source of gifts to the public official if the gifts aggregate to \$340 or more within 12 months prior to the decision (Gov. Code § 87103(e); 2 C.C.R. § 18703.4);
- 6) The public official's personal expenses, income, assets, or liabilities, as well as those of his or her immediate family. (Gov. Code § 87103; 2 C.C.R. § 18703.5).

Mr. Shine receives no compensation from the San Fernando/Santa Clarita affiliate, and Mr. Shine has no financial investment or interest in the organization. Accordingly, of these six economic interests, the only potentially affected economic interest is that of a business entity in which Mr. Shine serves as a director or officer. Gov. Code § 87103(d); 2 C.C.R. § 18703.1(b)). However, a nonprofit organization such as Habitat for Humanity is not considered a "business entity." Gov. Code § 82005. Mr. Shine therefore has no economic interest in Habitat for Humanity San Fernando/Santa Clarita affiliate subject to Sections 87100 *et seq.*, and therefore no financial interest in decisions affecting the San Fernando/Santa Clarita affiliate before CalHFA.

Because Mr. Shine has no economic interest under Section 87100, it is not necessary to complete the remainder of the eight-step analysis to determine if a conflict of interest exists pursuant to this portion of the Government Code. *See* Morrison Advice Letter, FPPC Adv. 1-06-157 ("Absent an economic interest, it is not necessary to apply the remaining steps" of the 8-step analysis); Stone Advice Letter, FPPC Adv. A-03-131 (if public official does not have an affected economic interest, "it is not necessary to analyze Steps 4 through 8 to determine if a conflict exists"). In short, because Mr. Shine does not have an affected economic interest, he does not have a conflict of interest under Section 87100.

3. The Common Law Doctrine on Conflicts of Interest.

In addition to the statutory prohibitions discussed above, a common law doctrine against conflicts of interest is still arguably recognized by California. This doctrine "strictly requires public officers (and employees) to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public." 63 Ops.Cal.Atty.Gen. 916 (1980) (quoting 46 Ops.Cal.Atty.Gen. 74, 86 (1965)). "The gist of the common law conflict of interest is to prevent the doing of an official act where the official may have a direct or indirect interest in the outcome." 58 Ops.Cal.Atty.Gen. 345 (1975).

However, there is a debate as to the viability of the common law doctrine in light of the passage of Sections 1090 and 87100.

A somewhat recent decision by the Second District of the California Court of Appeals has questioned whether the doctrine still applies. *See Brealzone Billiards v. Torrance* (2nd Dist. 2000) 81 Cal.App.4th 1205, 1231-1233, 97 Cal.Rptr.2d 467 (questioning whether the doctrine exists, and expressing caution over utilizing the doctrine, "assuming, arguendo, it exists"); *cf.*

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Clark v. Hermosa Beach (2nd Dist. 1996) 48 Cal.App.4th 1152, 1170-1173, 56 Cal.Rptr.2d 223 (recognizing and discussing the common law doctrine); 81 Ops.Cal.Atty.Gen. 274 (1998) (same). Furthermore, while the California Attorney General has argued that the common law doctrine was not abrogated by the enactment in 1974 of the Political Reform Act (including Section 87100), the common law doctrine "would not be applicable in situations where [Section 87100] may have affirmatively abrogated the common law doctrine such as with regard to the concept and extent of an exception for the 'public generally.'" 59 Ops.Cal.Atty.Gen. 604, 613-614 (emphasis added).

In essence, it appears that the common law doctrine applies to those instances where the financial proscriptions of Sections 1090 and 87100 do not apply, but where a public official has some other interest that would influence his or her actions. See, e.g., *Clark*, 48 Cal.App.4th at 1172-1173 (city councilmember who had previously objected to height of proposed project because it would block the ocean view from his rental dwelling violated common law doctrine because "an interest in preserving his ocean view was of such importance to him that it could have influenced his judgement" when voting on the project); 81 Ops.Cal.Atty.Gen. 274 (1998) (county supervisor who was also employed as executive director of public housing authority not allowed to participate in appointing or removing housing commissioners because commissioners set the terms and conditions of his employment); 63 Ops.Cal.Atty.Gen. 916 (1980) (California Attorney General's office has "predicated decisions on noncontractual conflict of interest questions on the common law rule against conflicts;" county supervisor allowed to provide air pollution consulting services to local Air Basin if supervisor did not participate in any decision, such as decisions on air pollution, which would further his personal interests); cf. *Breakzone Biliards*, 81 Cal.App.4th at 1233 (where project applicant had sued landlord, and landlord had given campaign contributions to members of the city council, those members did not have a conflict of interest in voting against the project).

The California Attorney General has determined that the common law conflict of interest prohibition does not apply to a city council member who serves on the board of directors of a nonprofit trust known as the "Rosie the Riveter Trust" (the "Trust") that was created to support the operations of a national historical park located within the city's boundaries. 88 Ops. Cal. Atty. Gen. 32 (2005). As a director of the nonprofit, the council member had solicited a financial contribution to the Trust from a business owner who had, in turn, proposed to lease a parcel of land from the city, which would require approval by the city council.

The Attorney General first determined that the city council member "has no personal stake - financial or otherwise - in the proposed lease of the city's property. The lease will not be with the council member in his private capacity or with the Trust of which he is a director. The lease will not benefit any business entity in which he has a direct or indirect financial interest, and the lease will not be a source of income to him." *Id.* (citations omitted). In addition, the Attorney General determined that the common law prohibition had been abrogated by the

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Legislature in this circumstance because "the Legislature has, in effect, authorized the lease agreement under [the] 'noninterest' exception" at Government Code section 1091.5(a)(8). *Id.*

Similarly here, Mr. Shine is a CalHFA Board member who serves on the board of directors of a nonprofit Habitat for Humanity affiliate. Because he most likely has a personal interest in the success of the Habitat for Humanity affiliate, Mr. Shine would arguably have a personal stake in a CalHFA contract with the San Fernando/Santa Clarita affiliate. However, this stake is similar to that of the executive director of the nonprofit Trust when soliciting a donation to the Trust. The only difference is that the donor to the Trust, rather than the Trust itself, was seeking a city contract, whereas the San Fernando/Santa Clarita affiliate would directly enter into a contract with CalHFA. A CalHFA contract would not be with Mr. Shine in his private capacity, would not benefit any business entity in which he has a direct or indirect financial interest, and would not be a source of income to him. In addition, even if Mr. Shine had some interest in such a contract, the common law prohibition has been abrogated by the Legislature in this circumstance because "the Legislature has, in effect, authorized" such a contract under the remote interest exception at Section 1091(b)(1), as discussed above.

VI. CONCLUSION

Jack Shine has performed commendable service as a volunteer Board member of a local nonprofit Habitat for Humanity affiliate, while at the same time serving on the CalHFA Board of Directors. There is nothing unlawful about Mr. Shine's dual role. Indeed, California law authorizes the participation of an officer of a non-profit entity contracting with the State to act in an official state capacity under prescribed circumstances. Further, there is no evidence that Mr. Shine exerted undue influence in the creation of the Habitat for Humanity Loan Purchase Program. The establishment of this program involved the input of numerous Habitat affiliates across the State of California.

Finally, CalHFA staff informed us that it is the practice of the Agency to not provide special treatment to Board members with respect to its business programs. This practice is vital to the integrity of CalHFA programs, as well as to the perception of fairness by those CalHFA business partners not represented on the CalHFA Board. Accordingly, we would recommend that CalHFA reflect its practice in a statement of principles made available to Board members and non-Board members. Such a written document would provide a helpful code of conduct to CalHFA Board members, assist CalHFA staff in responding to program related business requests from Board members, and reassure non-Board CalHFA business partners that CalHFA programs are available on an equal basis to all qualified participants.

To: Jack Shine, Chair of the Audit Committee of the Board of the California Housing Finance Agency

From: Steven A. Nissen and Randall Keen

Date: August 22, 2007 File No.: 25197-032

Subject: Report on Compensation Setting Process and Report on Unsubstantiated Claims of Board Conflicts

I. INTRODUCTION

The law firm of Manatt, Phelps & Phillips was retained by the California Housing Finance Agency ("CalHFA" or the "Agency") as a result of a request by the Audit Committee of the CalHFA Board ("Audit Committee"). The Audit Committee asked that we review matters concerning the process of determining compensation for key management, the contracting authority of the Executive Director, and anonymous allegations about the conduct of certain Board members of CalHFA. Specifically, this memorandum addresses the following scope of work, confirmed at a meeting of the Audit Committee on June 29, 2007:

- The process by which compensation was set or adjusted pursuant to SB 257 for key exempt management of the Agency, including but not limited to the Executive Director.
- The Agency's business relationship with Central Pacific Mortgage ("CPM") and the involvement of CPM President and Chief Executive Officer John Courson, in his capacity as Chair of the Board of CalHFA, in the statutory compensation setting process described above.

With respect to the above scope of work, we were asked to prepare a written report based on a review of whether the course of conduct relative to each matter was consistent with the law governing the Agency, its employees and its Board.¹

¹ The Manatt firm was also asked to review the amount and nature of the contracting authority delegated by the Board to the Executive Director of the Agency with respect to CalHFA's operating budget, relative to other public agencies and best practices. The Audit Committee requested that the issues of compensation and anonymous allegations be given priority, and we have suggested that the matter of Executive Director contracting authority be the subject of further discussion with the Audit Committee before the Manatt firm embarks on a study of this separate issue.

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II. NATURE OF REVIEW

Our review was extensive, covering a period of approximately two months.² During that period, we conducted a total of over two dozen interviews with senior executive staff of CalHFA, former CalHFA employees, various CalHFA Board members, representatives of the Executive Branch and state Legislature, as well as consultants involved in the salary survey process mandated by SB 257.³ A number of the face-to-face interviews resulted in follow-up discussions with interviewees. We also reviewed hundreds of emails, numerous hard copies of documents and the legislative history of SB 257. In addition, we researched relevant sections of the Government Code and Health & Welfare Code, as well as judicial opinions, FPPC rulings and Attorney General opinions.

Our Report attempts to confine itself to the scope of work described in the Introduction. We heard much during our review, *inter alia*, about the genesis of SB 257, concerns expressed by rating agencies about retaining and recruiting talent for CalHFA, longstanding vacancies in the Agency that added urgency to the compensation setting process, and the magnitude of salary increases granted by the CalHFA Board. We have tried to avoid engaging in value judgments concerning these issues and instead have focused our Report on compliance with statutes, regulations, Board procedures and best practices concerning (a) conflict of interest issues and (b) compensation setting processes in light of the enactment into law of SB 257.

III. SUMMARY OF FINDINGS

The CalHFA is a unique state agency, functioning simultaneously as a political subdivision of the state and as a business entity providing funding for affordable housing. While the Agency is subject to general state conflict of interest laws, the statutory framework governing CalHFA both encourages active Board involvement of individuals from the private and nonprofit housing and finance sectors, and creates various safe havens relative to potential conflict of interest activities. Specifically, we summarize our findings as follows:

² The engagement with the Manatt firm was effective as of June 15, 2007, and our report was completed on the date above, August 22, 2007.

³ SB 257 in part adds provisions to the California Health & Safety Code to authorize the financing of special needs housing by CalHFA and amends California Health & Safety Code section 50909 to authorize the board to set the compensation of key CalHFA management, require the Agency to use independent outside advisors to conduct salary surveys, cap compensation consistent with the independent salary survey and require the Department of Personnel Administration to review the methodology used in the independently conducted salary survey.

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- We found no evidence that John Courson's dual role as Chair of the CalHFA Board and President and CEO of CPM violated any laws or any regulations governing CalHFA. Indeed, such a dual role is contemplated and sanctioned by the statutes governing CalHFA.
- We found no evidence that Mr. Courson's conduct as Chair of the CalHFA Compensation Committee violated any laws or any regulations governing CalHFA.
- It appears that CalHFA followed the letter of the law governing compensation for key executives recently enacted in SB 257. However, the process through which an independent salary survey was conducted and on which key management compensation was set can be improved and should be reconsidered for the future.

With respect to setting compensation for key exempt management, we recommend a process that removes the Executive Director and other key management from contracting for and participating in the work of an independent salary survey contractor, requires the Compensation Committee⁴ to pre-approve any engagement of an independent salary survey provider, and prohibits Board members who do business with CalHFA from participating in the Compensation Committee to avoid even the appearance of impropriety.

IV. FINDINGS

A. John Courson's Contemporaneous Roles as CalHFA Board Chair, CalHFA Compensation Committee Chair and President/CEO of CPM was Not Unlawful nor Improper Under Current Regulations Governing CalHFA

1. Factual Background

In 2004, John Courson was appointed by Governor Arnold Schwarzenegger as Chair of the CalHFA Board. He was confirmed by the California State Senate approximately nine (9) months after his appointment, and has continued to serve as Chair of the Agency's Board to the present date.

While serving in the capacity of Chair of the CalHFA Board, Mr. Courson was also the President and Chief Executive Officer of CPM, as well as CPM's sole shareholder. During our interview, Mr. Courson estimated the volume of CPM's residential loan origination business to

⁴ We use the term "Compensation Committee" in our recommendations throughout this Report as a term of convenience that may be applied to any appropriate group of Board designees tasked with implementing the compensation mandate contained in SB 257.

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be approximately \$3.5 billion for 2005 and \$3.3 billion for 2006.⁵ The company ceased doing business in February 2007.

A memorandum dated March 2, 2007 from an anonymous author(s) self-designated the Coalition of Concerned CalHFA Employees ("CCCCE") asserts that John Courson engaged in discussions with CalHFA Executive Director Theresa Parker for CPM to become the exclusive originator of recently developed 35 and 40 year loan products, implied that Mr. Courson's role in helping to design the 35 and 40 year loan products constituted a conflict of interest, and queried whether the CalHFA Board was notified of the "volume" of CPM's business with CalHFA. The anonymous CCCCE memorandum also asserted that Executive Director Parker shared CPM's purported attempt to become an exclusive originator with "some of her senior staff" (Appendix 1)

CPM has been a CalHFA approved lender since 1987.⁶ All such approved lenders are required by CalHFA to execute a generic Mortgage Purchase and Servicing Agreement ("MPSA"), which, once executed, enables the signatory lender "to originate and/or sell for CalHFA purchase . . . eligible loans made pursuant to CalHFA's single family home loan programs." (Appendix 2)⁷ The recently developed 35 and 40 year loan products referred to by the CCCCE memorandum were among the eligible loans under the blanket approval granted pursuant to the MPSA. We discovered no evidence that CPM sought to become the exclusive originator of 35 and 40 year loan products offered by CalHFA or that John Courson used his Board position in any way to gain unfair advantage in accessing any CalHFA loan programs.

There was not complete consensus on the origins of the CalHFA 35 year IOP program during our interviews. Executive Director Parker recalled that the issue arose during a meeting involving certain senior staff and a ratings agency in early 2004. John Courson and others recall attending a National Conference of State Housing Agencies (NCSHA), also in 2004, and learning that at least one other jurisdiction's housing agency was offering a loan product similar to what eventually became the CalHFA "interest only PLUS" ("IOP") program. Mr. Courson recalls thereafter encouraging staff at CalHFA to research the merits of such a program for California.

However the idea for a California interest-only loan program first originated, by 2004 an internal CalHFA staff working group, led by former CalHFA senior executive Nancy Abreu, was already analyzing various programs to expand the Agency's ability to reach low and moderate income homebuyers ("Abreu Working Group"). There is no disagreement that Mr. Courson

⁵ As indicated below, CalHFA purchases of CPM originated loans represent a very small fraction of CPM's total business activity.

⁶ Based on history of loan purchases supplied by CalHFA's Homeownership Division.

⁷ The executed version of the MPSA for CPM could not be located either by CalHFA or John Courson.

that special loan program during the time CPM sold loans to CalHFA, with CPM ranking 24th among all participating lenders in number of loans sold and 25th in terms of aggregate dollar amount secured by first trust deeds. (Appendix 7) Nothing in these statistics indicates that CPM received any deferential treatment from CalHFA in its sales of the IOP product. *Exhibit 1* below provides a snapshot of what the CalHFA purchases in the IOP program were with respect to the top ten participants from March 2005 through January 2007, compared to CPM's involvement in the program for the same time period.⁹

Exhibit 1
Top Ten Participants in IOP 35 Year Loan Program from Inception to 1/12/07* Compared to Central Pacific Mortgage Participation

LENDER	LOANS ACTUALLY SOLD	GROSS LOAN RESERVATIONS	1ST AMOUNT OF SOLD LOANS
New Century Home	470	664	\$120,309,112
American Home Mortgage	462	685	\$145,199,632
Guild Mortgage	357	513	\$100,990,757
National City Mortgage	355	476	\$100,810,266
Clearinghouse CDFI	251	351	\$76,398,975
GMAC Mortgage	208	335	\$60,556,033
Pinnacle Financial	159	230	\$48,931,291
First Mortgage Corp.	136	174	\$42,791,501
RBC Mortgage Co.	133	158	\$33,060,877
Countrywide**	116	400	\$32,357,590
Central Pacific Mortgage	25	32	\$7,000,340

* CPM did not sell any IOP loans to CalHFA after this date.

** Countrywide had 400 loans in the "pipeline" as of January 12, 2007 representing over \$114 million secured by a First Trust Deed.

The only noticeable and arguably disproportionate increase we detected in CPM's business with CalHFA occurred with respect to mortgage insurance. For every year since 1995, CPM had been in single digits with respect to the number of its loans insured through CalHFA. In 2006 that number jumped up to 22, from 4 in the previous year.¹⁰ For the mortgage insurance program in the aggregate, total annual loans increased from 2,378 in 2005 to 3,583 in 2006. CPM activity reflected this trend, as CalHFA Homeownership reports that in 2006 CPM

⁹ A complete summary of 35 year IOP loan activity is attached to this Report. (Appendix 7)

¹⁰ By way of comparison, according to CalHFA's Mortgage Insurance Division as of July 10, 2007 CalHFA had a total of 8,635 loans in its insurance program.

transitioned from primarily FHA loans (which are not insured through CalHFA's mortgage insurance program) to conventional loans, most of which carried mortgage insurance provided by CalHFA. Specifically, CPM FHA loans decreased from 11 in 2005 to 7 in 2006, while conventional loans increased from 7 in 2005 to 22 in 2006. Eighteen of those 22 CPM loans in 2006 were CalHFA IOP 35 year loans. These statistics appear consistent with more general trends and fail to provide any evidence that CPM obtained any special benefit by virtue of its CEO's relationship to CalHFA.

2. Legal Analysis

There are two separate provisions in the California Government Code, at Sections 1090 and 87100, that govern conflicts of interest.¹¹ The application of each of these provisions to Mr. Couson's involvement with the interest-only loan program is discussed below.

a. Section 1090.

The first statutory conflict of interest provision under California law, at Government Code Section 1090 *et seq.*, specifically applies only to the making of governmental contracts,

¹¹ A common law doctrine against conflicts of interest is still arguably recognized by California courts. *See Breakzone Billiards v. Torrance* (2nd Dist. 2000) 81 Cal.App.4th 1205, 1231-1233, 97 Cal.Rptr.2d 467 (questioning whether the doctrine exists, and expressing caution over utilizing the doctrine, "assuming, arguendo, it exists"); *cf. Clark v. Hermosa Beach* (2nd Dist. 1996) 48 Cal.App.4th 1152, 1170-1173, 56 Cal.Rptr.2d 223 (recognizing and discussing the common law doctrine); 81 Ops.Cal.Atty.Gen. 274 (1998) (same). Sections 1090 and 87100 have apparently abrogated the common law doctrine with respect to financial conflicts of interest, and the common law doctrine therefore would apply only to those instances where a public official has some interest other than financial that would influence his or her actions. *See, e.g., Clark*, 48 Cal.App.4th at 1172-1173 (city councilmember who had previously objected to height of proposed project because it would block the ocean view from his rental dwelling violated common law doctrine because "an interest in preserving his ocean view was of such importance to him that it could have influenced his judgement" when voting on the project); 81 Ops.Cal.Atty.Gen. 274 (1998) (county supervisor who was also employed as executive director of public housing authority not allowed to participate in appointing or removing housing commissioners because commissioners set the terms and conditions of his employment); 63 Ops.Cal.Atty.Gen. 916 (1980) (California Attorney General's office has "predicated decisions on *noncontractual* conflict of interest questions on the common law rule against conflicts; " county supervisor allowed to provide air pollution consulting services to local Air Basin if supervisor did not participate in any decision, such as decisions on air pollution, which would further his personal interests); *cf. Breakzone Billiards*, 81 Cal.App.4th at 1233 (where project applicant had sued landlord, and landlord had given campaign contributions to members of the city council, those members did not have a conflict of interest in voting against the project). Because any potential allegation of a conflict involving Mr. Couson or Ms. Parker is analyzed pursuant to the financial proscriptions of Sections 1090 and/or 87100, it does not appear that the common law doctrine would be applicable to this analysis.

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and forbids a government official from having any financial interest in the making of a government contract. Section 1090 states in part:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

In short, for Section 1090 to govern actions by Mr. Courson, it must be determined

1) whether he is a state officer or employee; 2) whether he has made or would "make" a contract in his capacity as a state officer or employee; and 3) whether he might be "financially interested" in any such contract.

As a member of the Board, Mr. Courson is a state officer subject to Section 1090.

Accordingly, we address below whether Mr. Courson had a financial interest in the making of a contract when he suggested the development of an interest-only loan product by CalHFA that his mortgage company, CPM, later utilized. We also address the exception to Section 1090 that clearly allows Mr. Courson to participate in the development of CalHFA loan products.

While any participation in the process of formulating a contract may be sufficient to support a finding that a public official or employee "made" a contract, Mr. Courson's suggestion that staff analyze the possible development of an interest-only loan product does not appear to rise to the level of actual participation in the making of a contract. The idea itself apparently originated from multiple sources, including at a presentation by others at a national conference of state housing agencies. Mr. Courson's suggestion was taken up by an internal CalHFA Abreu Working Group studying various potential new products, including but not limited to an interest-only product. Staff ultimately designed the product that became the CalHFA 35-year IOP product through the working group process. In short, except for the suggestion itself, we did not find evidence that Mr. Courson had a substantive involvement in "preliminary discussions, negotiations, compromises and reasonings" in the development of the product.¹² See *Campaigna v. City of Sanger, supra*, 42 Cal.App.4th 533, 538. Indeed, Mr. Courson's conduct in suggesting CalHFA consideration of an interest-only product was consistent with the Legislature's intent that the "representation of varied interest groups on the board shall be deemed essential to obtain information for the development of policy and decisions of the board." Health and Safety Code

¹² CCCCE alleged that Mr. Courson sought for his company to become the exclusive provider of CalHFA's interest-only loan product. We found no evidence, either in the interviews we conducted, or in the documents we reviewed, that such a request was ever made or considered. In fact, Mr. Courson stated that the employees at CPM did not originate very many CalHFA loans for a variety of reasons (such as low origination fees and an antiquated processing system), and it would therefore have been impractical for CPM to be the exclusive originator of any CalHFA product. Our review of the modest number of CalHFA loans originated by CPM is consistent with this statement.

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§ 50904; *see also* § 50902 (Board appointees to include one "person experienced in residential real estate in the savings and loan, mortgage banking, or commercial banking industry").

CalHFA introduced its interest-only loan product in March, 2005, without a vote of the Board with respect to that specific loan program.¹³ CalHFA did not enter into any new contracts with its lenders when it developed the 35-year IOP product. When CalHFA develops new loan products, such new products are made available to all lenders with whom CalHFA already has written master agreements, and all such lenders have access to all of CalHFA's loan products on the same terms and conditions. (Appendix 2) After the interest-only program was developed, CalHFA followed its customary process and made the program available to all lenders with whom CalHFA already had written MPSA's, including CPM. (Appendix 3)

(f) **Mr. Courson Has a "Noninterest" under Section 1091.5
in Any CalHFA Loan Product, Including the Interest-
Only Loan Product.**

It is arguable that Board approval of the Agency's Five-Year Business Plan mentioning the IOP program operates as an amendment of the agency's contract with CPM, or even that each IOP loan purchased by CalHFA from CPM is a new agreement between the Agency and Mr. Courson's company. We have not been asked to analyze this issue and need not do so to determine whether Mr. Courson has a conflict of interest under California law with respect to new CalHFA loan products. For, even if it were determined that that CPM entered into a new or amended contract regarding the IOP program, Section 1091.5(a)(13) provides that Mr. Courson "shall not be deemed to be interested in a contract" if his interest is the following:

That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:

(A) The loan product or program is or may be originated by any lender approved by the agency.

¹³ The Board votes annually to adopt the agency's Five-Year Business Plan, but this Board action does not approve any specific loan product. Instead, the Five-Year Business Plans present the agency's broad goals for levels of loan activities. An interest-only product was first mentioned (in a bullet-point) in the 2004/2005 Five-Year Business Plan as one of many potential strategies to increase homeownership opportunities. In the following year, the 2005-2006 Five-Year Business Plan lists the interest-only program as a product that has already been implemented.

(B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.

As discussed above, the CalHFA interest-only program "may be originated by any lender approved by the agency" and "is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers" Accordingly, Mr. Courson has a defined "noninterest" in the interest-only loan product, and any participation he might have had in its development or approval did not violate Section 1090.

b. Section 87100.

The general conflict of interest provision under California law, under the Political Reform Act (Gov. Code § 81000 *et seq.*), prohibits a public official from making, participating in, or using "his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest." Gov. Code § 87100 *et seq.* "A public official has a financial interest . . . if it is reasonably foreseeable that the decision will have a material financial effect on" any of the official's defined financial interests. Cal. Gov. Code § 87103(e).

The courts and the Attorney General have recognized that when the Legislature adopts a specific conflict-of-interest exemption such as that contained in Government Code Section 1091.5(a)(13), that exemption abrogates other provisions that might otherwise apply in the same factual scenario. *See, e.g., 67 Ops. Cal. Atty. Gen. 369* (statute requiring officer of one agency to serve on board of another agency abrogates common law rule against incompatible offices); *American Canyon Fire Protection Dist. v. County of Napa* (1983) 141 Cal.App.3d 100, 105-106 ("What emerges from the interplay of the statutes just examined is that the Legislature intended, and in fact mandated, that a county board of supervisors distribute augmentation funds among all special districts, including those created and to some extent governed by the board itself. The Legislature could not have been blind to the potential conflicts of interest created statewide by imposing those dual functions.").

Here, the Legislature purposefully created a very specific exemption from Section 1090 for Board members "with respect to a loan product or programs if the officer . . . participated in the planning, discussions, development, or approval of the loan product or program," as long as the loan product can be originated by any CalHFA-approved lender and the program is generally available to qualifying borrowers. Gov. Code § 1091.5(a)(13). The Legislature could not have been blind to the potential conflicts of interest under Section 87100 if an officer of the Agency "participated in the planning, discussions, development, or approval of the loan product or program" Accordingly, it is apparent that the Legislature intended to abrogate Section 87100 with respect to such actions by a Board member.

B. The Process of the Agency in Setting Compensation for Key Management Followed the Letter of the Law, but Should Be Improved for the Future to Avoid Even the Appearance of a Conflict

1. Factual Background

Shortly after SB 257 was amended to essentially its current form in June 2006, Board Chair John Courson called for CalHFA at the Agency's July 2006 Board of Directors meeting to "put together a compensation committee draft charter" in anticipation of the passage of the legislation. (TR, Minutes of the CalHFA Board Meeting, July 7, 2006, p. 53:12-13) The concept for such a committee was first broached by Board member John Morris at the May 11, 2006 Board meeting (TR, Minutes of the CalHFA Board Meeting, May 11, 2006, p. 208:6-11). At the July meeting, Chairman Courson volunteered to work with staff in creating a compensation committee charter, and promised to "bring that back in September for consideration by the Board and be prepared to appoint a compensation committee at that time so that we can then move to the next step and start with the data and methodology." (TR, Minutes of the CalHFA Board Meeting, July 7, 2006, p. 67:1-3; 5-9). SB 257 was passed by both houses of the Legislature and then sent to the Governor on September 7, 2006. The Governor signed SB 257 into law on September 29, 2006.

a. A Compensation Committee Charter Was Drawn Up in August 2006 and a Retired Annuitant Was Retained That Same Month to Oversee the Salary Survey Process, but Much of the Work on the Survey was Completed before the Committee's First Meeting in November.

As promised, a Compensation Committee Charter was drawn up in August 2006 for consideration at the following month's Board meeting, where it was adopted on September 7, 2006 pursuant to Resolution 06-16. (Appendix 8) The Charter provides, among other things, for the Committee to "recommend to the Board compensation policies and procedures designed to attract and retain" qualified personnel. The Charter authorizes the Compensation Committee, in "consultation with the Board Chairman and the Agency Executive Director," to "direct the agency to engage consultants and advisors to assist the Committee in the execution of its duties." (*Id.*, description of Committee "Mission" and "Authority") The Committee is tasked, among other things, to "[p]eriodically cause to be conducted salary surveys that will form the basis of the design of a compensation plan that will attract and retain senior executive personnel." (*Id.*, description of "Duties") Upon the Board's adoption of Resolution 06-16, Chairman Courson appointed three members of the Compensation Committee, naming himself as Chair and Ed Czuker and John Morris as Committee members. (TR, Minutes of the CalHFA Board Meeting, September 7, 2006, p. 80:6-20).

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Prior to adoption of the Compensation Committee Charter, CalHFA's Executive Director asked Pat Meehan, a retired annuitant who had been hired on a short term basis on June 26, 2006 by the Agency for various unrelated administrative matters, to be responsible for causing a salary survey to be implemented. Ms. Meehan began work on this project sometime in August 2006 and was introduced to the CalHFA Board, after adoption of Resolution 06-16 at its September meeting, by CalHFA Executive Director Terri Parker who explained: "We thought . . . in order to be best keeping with the intent of SB 257, to try to have this be as arm's length as we possibly could, that we would hire Pat as a consultant to us, to hire an outside consultant to perform the survey." (*Id.*, p. 81:19-23) By the September Board meeting, retired annuitant Meehan had already completed a considerable number of tasks with respect to retaining a salary survey contractor, including canvassing other state agencies who had recently used consultants for surveys (e.g., CALPERS, CALSTRS and the Department of Personnel Administration ("DPA")),¹⁴ contacting other local and state housing finance agencies, obtaining published data concerning the programs and compensation of comparable agencies, identifying potential independent salary survey providers, as well as drafting and disseminating a Request for Proposal ("RFP") (Appendix 9) to potential compensation survey contractors. Ms. Meehan announced at the September 2006 meeting that she expected proposals to be submitted by salary survey consultants in response to the RFP by the following day and the Board's review to be completed by the beginning of the calendar year. (TR, Minutes of the CalHFA Board Meeting, September 7, 2006, p. 83:21-84:4)

The first meeting of the newly chartered Compensation Committee took place on November 9, 2006. Despite the Compensation Committee Charter duty statement that the Committee would "cause to be conducted salary surveys that will form the basis of the design of a compensation plan," by its first meeting in November the following things had already occurred:

- the compensation consultant, Watson Wyatt Worldwide ("Watson Wyatt"), had been hired
- the proposed methodology had been drafted by Watson Wyatt and shared with DPA
- the participants in the survey had already been selected
- the survey instrument was written and in circulation to recipients
- numerous recipients had already responded to the survey

¹⁴ Executive Director Parker and Steve Spears (then a contractor with the agency but later appointed as Chief Deputy Director) also made calls to sister state agencies regarding compensation surveys (TR, Minutes of the CalHFA Board Meeting, September 7, 2006, p. 84:21-24).

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b. Retired Annuitant Pat Meehan Was the Primary Contact for Purposes of Causing an Independent Salary Survey to Be Conducted. Executive Director Theresa Parker Had Direct Involvement In Certain Aspects of the Process.

Watson Wyatt¹⁵ was one of two entities that submitted bids to conduct the salary survey. Its proposal, dated September 8, 2006, addressed to Pat Meehan, noted that the Agency desired to present a final report to the Compensation Committee in November. Calling it an "aggressive timeline," Watson Wyatt noted that "[c]ustom survey projects of this size typically take approximately 8 to 12 weeks to complete, dependent on the timing and quality of participant responses." (Appendix 10) Ms. Meehan told us in our interviews that she selected the Watson Wyatt bid because the company had local offices in California, was familiar with CalHFA as a result of a recent project done for the Agency, and had been recommended by other California state agencies.

While the predominant volume of contact between Watson Wyatt and CalHFA was indeed "arm's length" between Pat Meehan and various executives of Watson Wyatt, there was direct involvement by Executive Director Theresa Parker in the process, from contracting with the consultant, to commenting on the survey design, encouraging responses from survey recipients, defending its methodology to DPA and finalizing the work product. While the involvement was indeed direct from time to time, we conclude that it did not violate any legal prohibitions given the unique statutory framework governing CalHFA and the involvement of an independent survey entity to filter and validate any information offered. Our legal analysis on this question appears below in section IV.B.2, and our factual review of direct involvement appears immediately below.

On September 15, 2006, a CalHFA Contract Approval Form (known as a "CARF") was prepared and approved by Executive Director Theresa Parker for the services of Watson Wyatt. (Appendix 11) Thereafter, Watson Wyatt entered into a written agreement with CalHFA, effective as of September 18, 2006, executed by Director of Financing Bruce Gilbertson on behalf of CalHFA. (Appendix 12)¹⁶

On the same day that the compensation consulting contract became effective, Watson Wyatt executives met with Board Chair John Courson, consultant Pat Meehan, CalHFA

¹⁵ Watson Wyatt Worldwide is a pre-eminent human resource and financial firm, reporting current revenues on its website of \$1.3 billion and 6,700 associates in 31 countries.

¹⁶ Pursuant to 25 CCR §§ 10002 and 13302 (c), the Executive Director prepares a Delegation of Signature Authority for selected other officers of the Agency for use when the Executive Director is unavailable. (Appendix 13) Mr. Gilbertson was one of the named authorized officers to sign documents at the time of the Watson Wyatt contract, and had no other apparent direct involvement with the compensation process other than executing the agreement.

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Executive Director Theresa Parker and CalHFA contract employee Steve Spears who were all at a conference in San Francisco. The participants agree that the meeting generally covered Watson Wyatt's background, the salary survey process, potential participants in the survey and the spectrum of options regarding benefits.¹⁷ At some point at or shortly after the face-to-face meeting in San Francisco, CalHFA provided Watson Wyatt with a July 2006 publication from Fitch Ratings containing a financial review of State Housing Finance Agencies for all 50 states. (Appendix 14) Watson Wyatt selected the state housing finance agency participants for the salary survey based on the Fitch Ratings publication, along with "feedback" from the September 18 meeting in San Francisco, as indicated in its email dated October 4, 2006. (Appendix 15) On October 6, 2006, Pat Meehan requested by email that Watson Wyatt add both the San Francisco Housing Authority and the Housing Authority of the City of Los Angeles as participants in the survey. (Appendix 16)¹⁸ In that same email string, Watson Wyatt further articulated the criteria it applied in selecting comparables from the pool of other state housing finance agencies, stating that the "HFAs were selected based on their Asset Rank, Revenue Rank and % Variable Debt Rate" from the Fitch Ratings Report of July 2006, and that the "% Variable Debt Rate was given extra weight in the decision, given that this is likely an indication of job complexity for several of the positions." (*Id.*)

In advance of distributing its survey questionnaire to participants on October 16, 2006, Watson Wyatt wrote to Pat Meehan requesting that CalHFA's Parker and Spears directly contact survey participants "to introduce the survey," explaining that "even a quick email from your organization can increase the survey response rate, and [we] prefer to use this approach when appropriate." (Appendix 17) Director Parker made a number of contacts with housing finance agencies and nonprofits regarding the survey in mid to late October. (Appendix 18) In mid November, Watson Wyatt requested that Ms. Parker follow up with selected agencies identified by the survey consultant, which was done. (Appendix 19) In all the communications we were able to review, it appears that Executive Director Parker simply communicated a neutral request to agencies selected by Watson Wyatt to respond to the survey for the purpose of increasing participation, rather than engaging in substantive communications about the data content involved. Ms. Parker's follow-up efforts appeared to be quite successful in that 18 of 22 survey

¹⁷ We note that the only other Response to RFP submitted, from Connecticut based McLagan Partners, Inc., provided for a "Market Assessment of Health and Welfare and Retirement Plans" for an additional fee of \$30,000 - \$60,000, but did not include an actuarial valuation of benefits plans. Watson Wyatt estimated to us that inclusion of a comparative retirement plan study in the survey would have added a substantial cost, required between 2 and 4 months of additional time, and might have caused a drop-off in the response rate because of the added burden of responding to a lengthier survey questionnaire.

¹⁸ Watson Wyatt indicated to us in our interview that the final determination of who would be on the participant list was made by Watson Wyatt, that clients will typically propose "comps" and that Watson Wyatt will "push back" when a proposed "comp" is not appropriate.

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recipients ultimately responded – a result which Watson Wyatt described as a very high response rate.¹⁹

Prior to completion of its survey, there was one more direct contact between Watson Wyatt and CalHFA senior executive staff. Watson Wyatt delivered a draft Custom Market Pricing Survey dated December 4, 2006 to CalHFA. (Appendix 20) On December 7, 2006, Brent Miller and Carrie Thomas of Watson Wyatt (Ms. Thomas had earlier met with CalHFA representatives in San Francisco in mid September), met with Board Chair John Courson, Executive Director Theresa Parker and consultant Pat Meehan in Sacramento, with Steve Spears participating by telephone. By December 7, all participants analyzed in the survey had responded. The purpose of the meeting, as per Watson Wyatt, was to review the content of the draft report for clarity and accuracy, not to change substantive content. According to our interview with Watson Wyatt executives, such a final review with the client is common practice. After the meeting, Watson Wyatt produced the final version of the Custom Market Pricing Survey, dated December 11, 2006, which was delivered to the members of Compensation Committee for the Committee's December 14, 2006 scheduled meeting. (Appendix 21)

We have done a review comparing the December 4 draft and the December 11 final version of the survey. Many of the changes were indeed stylistic. A few other changes were substantive, involving the addition of a 25th and a 75th percentile in the compensation charts presented, which added to the median that already appeared in the draft version. One other substantive change between draft and final survey version involved page 16 of the December 4 draft, which listed the positions of Executive Director, Director of Financing and General Counsel as being compensated "below the market median for base salary," while the Chief Information Officer, Director of Financial Risk Management and Director of Legislation "fall within 10% of the market median for base salary." (Appendix 21, p. 16) According to Watson Wyatt, CalHFA expressed concern that the Board had not yet determined as a matter of policy that the median was the correct measure against which to set compensation, and so asked that references to the median be deleted from the observations on page 16 of the December 4 draft survey.

¹⁹ Watson Wyatt informed us that the level of response to the survey was so high and so timely that having additional time beyond December was unnecessary and would have provided no added benefit to Watson Wyatt in completing its survey work.

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- c. **The Salary Survey Methodology Was Reviewed by DPA and Certain of DPA's Comments Were Shared With the CalHFA Board Prior to Making Compensation Decisions, but the Survey Questionnaire Itself Was Already in Circulation Prior to DPA Review.**

In late October 2006, Watson Wyatt presented a written methodology for analyzing the anticipated survey results to Pat Meehan. Within days of receipt of the methodology, Executive Director Parker accompanied Pat Meehan to a meeting with senior executives of DPA on October 26, 2006 to provide an overview of SB 257 and the survey methodology. Later that day, Ms. Parker authored a memorandum to DPA with enclosures outlining the survey methodology, survey participants, CalHFA positions being reviewed and job descriptions, and the Compensation Committee Charter. (Appendix 22) The memorandum noted that "I look forward to working collaboratively with DPA on this effort and to developing appropriate compensation, policies and procedures that will address our business requirements, protect our credit ratings and enable us to provide housing services consistent with our unique mission." (*Id.*) The legislation enacted as part of SB 257 does not require the collaboration promised by the CalHFA memorandum, and except for the exchange of correspondence described immediately below there is no evidence of subsequent communication between DPA and CalHFA on this issue prior to the CalHFA Board making its salary and compensation range determinations.

On November 13, 2006, DPA Director Gilb responded to CalHFA Director Parker, questioning the criteria used in selecting survey participants, the positions listed for compensation setting, and the propriety of the salary consultation process. Additionally, Director Gilb recommended that "any salary survey should incorporate detailed analysis of all aspects of employee compensation," including among other things retirement benefits, health insurance, vesting requirements and employer-employee contributions. (Appendix 23) The DPA November 13 response was provided to Watson Wyatt for comment, but was not shared with the CalHFA Compensation Committee for consideration, although Watson Wyatt listed certain of DPA's concerns and responses thereto in its final survey distributed to the CalHFA Compensation Committee and Board. (*See* Appendix 21, p. 14) On November 30, 2006, Executive Director Parker authored the response to DPA's November 13 memorandum on the compensation survey, copying the CalHFA Compensation Committee and Board Chair. (Appendix 24) As a practical matter, the DPA November 13 memorandum critiquing Watson Wyatt's survey methodology had no substantive impact on the survey questionnaire itself, for by that time the survey had already been in circulation for nearly one month and participants had already responded. To the extent the comments of the DPA November 13 memorandum were incorporated in the Watson Wyatt final survey, both the CalHFA Compensation Committee and Board had an opportunity to review and analyze such comments in advance of making any compensation determinations.

d. The Compensation Committee Considered the Salary Survey Report of Watson Wyatt at Multiple Meetings and Made Compensation Recommendations Based Thereon to the Full Board in January 2007.

The December 11 survey report was initially discussed at the second meeting of the Compensation Committee on December 14, 2006. At that meeting, Watson Wyatt account executive Brent Miller confirmed that even though Watson Wyatt requested information about comparable housing finance agencies from CalHFA, the company "in all cases independently determined that the choices used in the survey were appropriate according to standard methodology." (Minutes of the CalHFA Compensation Committee, December 14, 2007, p. 2) Mr. Miller went on to state that Watson Wyatt did not have the detail necessary to do a direct comparison among benefits packages and that the collection of such information would not make a material difference in the Pay Mix Summary in the Salary Survey (Appendix 21, p. 30) which provides a general comparison of the mix of CalHFA benefits relative to the financial industry and not-for-profit market. (Minutes of the CalHFA Compensation Committee, December 14, 2007, p. 3) Retired annuitant Pat Meehan observed at this same meeting that DPA had been unable to correlate benefits packages in its most recent statewide salary survey.²⁰

At its next meeting, on January 9, 2007, the CalHFA Compensation Committee adopted salary ranges for selected management by placing the positions under consideration into five different tiers. One week later, at its January 17, 2007 meeting, Executive Director Parker was asked by the Committee to present performance evaluations and recommend salary levels within the ranges adopted by the Committee on January 9, 2007, including her own compensation. Ms. Parker provided the requested evaluations and proposed salaries, and the ensuing recommendation of the Compensation Committee based on this process was adopted by the full CalHFA Board the following day, January 18, 2007. The action of the Board on January 18, 2007 in establishing salary ranges and setting compensation for key exempt management is reflected in Resolutions 07-06 and 07-07 respectively. (Appendix 25)

²⁰ Our discussion with DPA confirms that that agency has not yet developed the model or methodology to effectively compare the value of benefits offered to employees because of the large number of variables involved.

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- e. **The CalHFA Board Made Compensation Adjustments in March 2007 After Meeting with a Legislative Committee Chair and the Governor's Office, but Payment Letters Have Yet to Be Provided for the Executive Director and Selected Other Positions.**

After the January 18, 2007 Board meeting, news accounts were published referring to the " hefty pay raise" garnered by CalHFA's Executive Director, noting that "top managers at the affordable housing bank will get increases of 10% to 47%. (See Appendix 26 for Associated Press version of Sacramento Bee article) Those published reports, in turn, caused the Chair of the Senate Committee on Transportation and Housing, State Senator Alan Lowenthal, to send a letter to Board Chair John Courson expressing concern that CalHFA's new statutory authority was being used to increase salaries for existing staff rather than recruiting people for hard to fill jobs,²¹ and caused the Governor's Office to call for a meeting with Board Chair Courson and Executive Director Parker concerning compensation decisions made by the Board.

Governor Schwarzenegger's SB 257 signing message (Appendix 28) viewed compensation for "qualified investment professionals" differently from compensation for "top administrative personnel." The signing message states in part: "I instruct CalHFA to work closely with the Department of Personnel Administration to develop and implement an appropriate salary setting methodology that will improve CalHFA's ability to recruit and retain qualified investment professionals while maintaining salary levels comparable with other state and local housing finance entities. In addition, I would support legislation next year to limit salaries for top administrative personnel in the same way that salaries for other exempt employees are now limited."²²

²¹ Senator Lowenthal's letter quotes his statements at his Committee's August 28, 2006 hearing on SB 257: "I am mindful of the possibility that this salary authority could be used inappropriately" and "I plan to monitor salaries at the agency to ensure they do not get out of hand." Senator Lowenthal also stated that ". . . I would like to make it clear that I do not want to see this salary authority used to substantially boost salaries of staff in the years before retirement." (Appendix 27) Neither the testimony given by Executive Director Parker nor the Senator's remarks at the Hearing were part of the deliberations of the Compensation Committee prior to making its salary decisions.

²² The signing message was sent with the approved legislation to the Secretary of State on or about September 29, 2006. It is unclear whether the Governor's signing message was disseminated to the entire CalHFA Board in advance of CalHFA's Compensation Committee and Board meetings, but a copy of the signing message was attached to the CCCCE memorandum dated January 3, 2007 and addressed to all members of the CalHFA Board. Such signing messages do not have the force of law and would not be recognized by a court to help determine statutory intent. Indeed, the legislation as enacted does not distinguish between administrative and investment personnel, but instead encompasses "management." SB 257 contains a specific legislative finding that "CalHFA's high quality credit rating depends in

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The meeting requested by the Governor's Office took place in early February 2007, and shortly thereafter at the next CalHFA Board meeting on March 8, 2007, the Board of Directors (a) adopted Resolution 07-10 which reduced the maximums in the salary ranges previously adopted in Resolution 07-06 and (b) adopted Resolution 07-11, which reduced Executive Director Parker's compensation from \$200,000 annually to \$175,000 at her request.²³ (TR, Minutes of the CalHFA Board Meeting, March 8, 2007, p.101:1-7, 102:7-10; Appendix 29). However, even after these compensation adjustments, DPA has not yet given notification to the State Controller authorizing payment at the levels approved by the CalHFA Board for the Executive Director, Chief Deputy Director and Chief Information Officer.

2. Legal Analysis

a. Compliance with SB 257.

We first summarize CalHFA's compliance with the requirements of Health and Safety Code section 50909, as modified by SB 257. Section 50909 states in part:

(a) Notwithstanding Sections 19816 and 19825 of the Government Code, the compensation of key exempt management, including the executive director, the chief deputy director, the general counsel, the director of financing, the director of homeownership programs, the director of multifamily programs, the director of insurance and the financial risk management director shall be established by the board in the agency's annual budget, in amounts which are reasonably necessary, in the discretion of the board, to attract and hold a person of superior qualifications.

(b) (1) To determine the compensation for the positions described in this section, the agency shall cause to be conducted, through the use of independent outside advisors, salary surveys of both of the following:

- (A) Other state and local housing finance agencies that are most comparable to CalHFA.
- (B) Other relevant labor pools.

significant part on ratings agency and investor confidence in the ability of the *management* of the agency," and unambiguously states that "the compensation of key exempt *management*, including the executive director" shall be established by the Board. (emphasis added)

²³ The \$175,000 figure is the same amount now earned by State Agency Secretaries, including the Secretary of the Business, Transportation and Housing Agency pursuant to compensation authority exercised by the Department of Personnel Administration under Government Code section 19825.5. One significant difference in the compensation adjustment, however, between an Agency Secretary and the CalHFA Executive Director, is that an incumbent Agency Secretary will receive a maximum ten percent increase for purposes of retirement calculations during any year to "prevent retirement spiking and encourage incumbents to remain in their positions longer." (Appendix 30)

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(2) The salaries so set by the board shall not exceed the highest comparable salary for a position of that type, as determined by the survey.

(c) The Department of Personnel Administration shall review the methodology used in these salary surveys.

We first review subsection (b)(1), which requires that compensation be determined through independently conducted salary surveys. As noted above, Ms. Meehan selected Watson Wyatt as CalHFA's "independent outside advisor," and Watson Wyatt performed a salary survey of "[o]ther state and local housing finance agencies that are most comparable to CalHFA." Watson Wyatt began with a list from a July 2006 publication from Fitch Ratings containing a financial review of State Housing Finance Agencies for all 50 states. (Appendix 14) Watson Wyatt selected the "most comparable" agencies for the salary survey based on "feedback" from the September 18 meeting in San Francisco (Appendix 15), and the agencies' "Asset Rank, Revenue Rank and % Variable Debt Rate" from the Fitch Ratings Report of July 2006. (Appendix 16) Watson Wyatt determined to give the "% Variable Debt Rate . . . extra weight in the decision, given that this is likely an indication of job complexity for several of the positions." *Id.* At least two local housing finance agencies, the San Francisco Housing Authority and the Housing Authority of the City of Los Angeles, were also asked to participate in the survey. *Id.* Finally, Watson Wyatt surveyed other relevant labor pools, such as nonprofits (including Bridge Housing and Mercy Housing) and other California state agencies that employ investment professionals and whose boards set compensation (such as CalPERS, CalSTRS, and State Compensation Insurance Fund). (Appendix 21) While CalHFA staff made recommendations on survey participants, Watson Wyatt acted independently from the Agency and made the ultimate decision as to the proper pool of comparable agencies. (Appendix 16; Minutes of the CalHFA Compensation Committee, December 14, 2007, p. 2) In sum, it appears that the salary survey was conducted by an "independent outside" advisor as required by statute.

Next, subsection (b)(2) places a cap on the salaries that can be set by the Board. As noted above, the salaries ultimately approved by the Board on January 18, 2007 (and modified on March 8, 2007) were within the range established by the Watson Wyatt surveys, and none of the approved salaries came close to the "highest comparable salary for a position of that type." (Appendix 25, 29)

Subsection (c) requires DPA to "review the methodology used in these salary surveys." In late October 2006, Watson Wyatt presented a written methodology for analyzing the anticipated survey results to Pat Meehan. Within days thereafter, Ms. Parker provided DPA with a memorandum and enclosures outlining the survey methodology, survey participants, CalHFA positions being reviewed and job descriptions, and the Compensation Committee Charter (Appendix 22), and she and Pat Meehan met with senior DPA executives to discuss the survey methodology. On November 13, 2006, DPA Director Gilb provided a written response to CalHFA Director Parker, questioning several aspects of the methodology. (Appendix 23) As SB

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257 only requires that DPA “review” the methodology used, and does not authorize DPA to “approve” the survey methodology, the strict statutory requirement in subsection (c) appears to have been met. The legislative intent with respect to timing of DPA review is not clear, since the statute reads that DPA “shall review the methodology used in these salary surveys” (Section 50909(c), emphasis added) which implies an after-the-fact review to validate methodology actually used in the survey, rather than methodology *to be used* in an upcoming survey.²⁴

Subsection (a) then requires the Board to establish “the compensation of key exempt management, including the executive director, the chief deputy director, the general counsel, the director of financing, the director of homeownership programs, the director of multifamily programs, the director of insurance and the financial risk management director”

The Board properly established the compensation of the positions it determined to be “key exempt management,” which included not only the positions listed in the statute, but also included the Director of Legislation and Chief Information Officer. We initially note that the statute does not limit the positions that are considered to be “key exempt management” to those explicitly listed. Instead, the use of the word “including” in a statute is ‘ordinarily a term of enlargement rather than limitation.’” *Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 717, 74 P.3d 726 (citation omitted). For example, where a statute defines a “person” as “including corporations,” the meaning of “person is not limited to only natural persons and corporations, but can also include other entities such as an unincorporated association. *Id.* According,ly, it was within the Board’s purview to determine whether any additional positions qualified as “key exempt management.”

Finally, subsection (a) states that in setting compensation, the Board shall establish compensation levels “in amounts which are reasonably necessary, in the discretion of the board, to attract and hold a person of superior qualifications.” The courts have held that administrative boards and officers must be allowed to function “with as little judicial interference as possible.... Such boards are vested with a high discretion and its abuse must appear very clearly before the courts will interfere.” *See, e.g., Talmo v. Civil Service Com.* (1991) 231 Cal.App.3d 210, 230, 282 Cal.Rptr. 240. We are not aware of any evidence that the Board abused its discretion in establishing the compensation levels. In fact, the compensation levels established by the Board were well within (or below) the amounts paid for comparable positions in other, smaller housing finance agencies as determined by the Watson Wyatt survey.

²⁴ At any rate, there is no evidence that DPA and CalHFA collaborated on the survey or its methodology as promised in correspondence, but there is no statutory obligation to do so. We do note, however, that most of the DPA comments on the methodology were conveyed in summary form in the Watson Wyatt survey to the CalHFA Board for its deliberations. (Appendix 21)

b. Conflicts of Interest

The application of the conflict of interest provisions at Sections 87100 and 1090 of the California Government Code to Ms. Parker's involvement in the salary survey process are discussed below.

(i) Section 87100.

The general conflict of interest provision under California law, under the Political Reform Act (Gov. Code § 81000 *et seq.*), prohibits a public official from making, participating in, or using "his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest." Gov. Code § 87100 *et seq.* "A public official has a financial interest . . . if it is reasonably foreseeable that the decision will have a material financial effect on" any of the official's defined financial interests. Cal. Gov. Code § 87103(e).

(a) Steps to the Analysis under Section 87100.

There is an eight-step analysis under section 87100:

- 1) Determine whether the person is a "public official";
- 2) Determine whether the person made, participated in making, or used his or her official position to influence a government decision;
- 3) Identify the person's economic interests;
- 4) Determine whether the identified economic interests were directly or indirectly involved with the governmental decision;
- 5) For each of the identified economic interests in Step 3, determine the applicable materiality standard;
- 6) Determine whether it is "reasonably foreseeable" that the governmental decision in question will have a "material financial effect" on each of the identified economic interests;
- 7) Determine if the reasonably foreseeable financial effect on any of the economic interests is distinguishable from the effect upon the public generally. If the effect is indistinguishable from that on the public generally, then the person was not excluded from participation in the decision.

8) Determine if the person's involvement was legally required despite the conflict of interest. If involvement was legally required, then the person was not excluded from participation in the decision, despite the conflict of interest.

The discussion below utilizes the 8-step analysis discussed above and addresses whether Section 87100 prohibits Ms. Parker from making, participating in, or using her official position to influence CalHFA's decision on her compensation.

(b) Ms. Parker is a "Public Official"

A public official is "a member, officer, employee, or consultant of a state or local government agency. . . ." Cal. Gov. Code § 82048. As Executive Director of CalHFA, Ms. Parker is clearly a public official.

(c) Making, Participating in, or Attempting to Influence a Government Decision.

A public official "makes a governmental decision" when the official, acting within the authority of his or her position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. Cal. Gov. Code § 87100; 2 C.C.R. § 18702.1. A public official "participates in making a governmental decision" when, acting within the authority of his or her position and without significant substantive review, the official negotiates, advises or makes recommendations to the decisionmaker regarding the governmental decision. Cal. Gov. Code § 87100; 2 C.C.R. § 18702.2. A public official is attempting to use his or her official position to influence a decision before his or her own agency if, for the purpose of influencing the decision, the official contacts or appears before any member, officer, employee, or consultant of his or her agency. Cal. Gov. Code § 87100; 2 C.C.R. § 18702.3.

The Political Reform Act specifically excludes the salary a government official receives from a government agency from the definition of "income." Gov. Code § 82030(b)(2). In addition, the Fair Political Practices Commission ("FPPC") (the regulatory body responsible for implementing and enforcing the provisions of Section 87100) has adopted two regulations that exclude actions related to a person's compensation from the definition of making, participating in making, or using an official position to influence a government decision, as follows:

-
- (a) Making or participating in making a governmental decision shall not include:
 -
 - (3) Actions by public officials relating to their compensation or the terms or conditions of their employment or contract.

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(b) Notwithstanding Title 2, California Code of Regulations, section 18702.3(a), an official is not attempting to use his or her official position to influence a governmental decision of an agency covered by that subsection if the official:

....

(3) Negotiates his or her compensation or the terms and conditions of his or her employment or contract.

2 C.C.R. § 18702.4.

The FPPC has advised that these regulatory exclusions allow a public official to actively participate in governmental decisions regarding the official's compensation. See Johnson Advice Letter, FPPC Adv. 1-94-050; Hensley Advice Letter, FPPC Adv. A-92-525; Filmer Advice Letter, FPPC Adv. A-87-096.

Accordingly, because Ms. Parker would not have any financial interest other than her CalHFA salary, and because the FPPC's regulatory exclusions allow Ms. Parker's participation in any case, Section 87100 does not prohibit Ms. Parker from participating in or using her position to influence CalHFA's decision on her compensation.

(ii) Section 1090.

The second statutory conflict of interest provision under California law, at Government Code Section 1090 *et seq.*, specifically applies only to the making of governmental contracts, and forbids a government official from having any financial interest in the making of a government contract. It seems counterintuitive that Section 1090 might apply when the statutory and regulatory provisions under Section 87100 expressly allow the Executive Director to participate in actions affecting her own compensation. Nonetheless, the Attorney General has opined that Section 1090 can still apply in these types of situations, because "[a]s a general proposition, the PRA was intended to proscribe conflicts arising between public duties and private or personal financial interests, and not conflicts which might arise between two public interests an individual might have." 73 Ops. Cal. Atty. Gen. 191 (1990) (quoting 59 Ops. Cal. Atty. Gen. 604, 614, fn 15 (1976) (noting also that there is an "obvious" conflict under Section 1090 for a teacher who is elected to a school board, as the school board makes decisions regarding teacher salaries, even though the teacher's income does not impose a conflict under Section 87100).)

Accordingly, because the CalHFA Executive Director acted not just with respect to her own compensation but, as discussed below, was engaged in the various public duties imposed by statute (including SB 257) that affect her salary and the salary of others, Section 1090 must be analyzed.

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Section 1090 states in part:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

In short, for Section 1090 to govern actions by Ms. Parker, it must be determined whether 1) she is a state officer or employee; 2) whether she has made or would "make" a contract in the individual's capacity as a state officer or employee; and 3) whether she might be "financially interested" in any such contract.

There is no doubt that as Executive Director, Ms. Parker is a state employee subject to Section 1090. See *California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.* (2007) 148 Cal.App.4th 682, 690-694, 56 Cal. Rptr.3d 92 (CALFHA consultants are treated as employees and therefore subject to Section 1090). Consequently, we address below whether Ms. Parker had a financial interest in the making of a contract when she participated in the salary survey process. We also address the exceptions to Section 1090.

(a) Ms. Parker's Involvement in the Salary Survey Process Could be Construed as "Making a Contract" In Her Official Capacity.

The definition of a contract "made" in an official capacity includes engaging in preliminary discussions, negotiations, compromises and reasonings relating to the contract, as well as actually voting on the contract. *Campagna v. City of Sanger* (1996) 42 Cal.App.4th 533, 538; see also *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 571; *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191. In short, any participation in the process of formulating a contract may be sufficient to support a finding that a public official or employee "made" a contract. Accordingly, Section 1090 would appear to prohibit virtually any involvement by Ms. Parker in the process of establishing her new salary.

As discussed above, Ms. Parker sought to insulate herself from participation in the compensation process by hiring a retired annuitant, Pat Meehan, to select and oversee the company that would conduct the salary survey required by SB 257. This was a step not required by SB 257, and yet it served to establish some distance between Ms. Parker and the overall process. The company selected by Ms. Meehan, Watson Wyatt, is an internationally recognized entity which conducted its work independently.

However, Ms. Parker was involved in several steps in the salary survey process leading up to the formulation of salary decisions by the Board. Ms. Parker requested and approved the

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Contract Approval Request to hire Watson Wyatt, as well as attended meetings with Watson Wyatt concerning the salary survey formulation, methodology, survey participants and survey results. Ms. Parker also directly communicated with DPA over the salary survey methodology review required by SB 257, where the process and criteria for the salary survey were discussed.

There is no evidence that Ms. Parker directed Watson Wyatt to include any particular housing agency in the salary survey or to exclude any others in a way that might have influenced the results. Indeed, Watson Wyatt made its own determinations regarding which agencies were the most appropriate comparison group, based on agency size and complexity.

Nonetheless, it is possible that despite taking these steps to insulate herself from the salary survey process, Ms. Parker's involvement was enough to meet the very low threshold to support a finding that she "made" a contract in her official capacity, necessitating an analysis of whether she was "financially interested" in the result of any salary increase voted on by the CalHFA Board.

(b) **Ms. Parker Has a Financial Interest In Her Own Salary.**

The courts have given a broad definition to "financial interest" under Section 1090. There is no requirement of a "direct interest" in the share of profits. *People v. Honig* (1996) 48 Cal.App.4th 289, 315 (citations omitted). Rather, "the instant statutes are concerned with any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the [government]." *Id.* at 315 (citations omitted).

The word "financially interested" as used in Government Code section 1090 means any financial interest which might interfere with a city official's unqualified devotion to his public duty. The interest may be direct or indirect and include any monetary or proprietary benefits, or gains of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the city officer, in his official capacity, does business with himself in a private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer's relationship to the individual or business firm at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual has received.

People v. Watson (1971) 15 Cal.App.3d 28, 37 (citing *People v. Darby* (1952) 114 Cal.App.2d

412, 433). Furthermore, "prohibited financial interests are not limited to express agreements for benefit Rather, forbidden interests extend to the expectation of benefit . . . and may be inferred from the circumstances." *Honig*, 48 Cal.App.4th at 315.

Section 1090 applies to any contract that would increase a public employee's compensation, including an employee's own employment contract. *See* 65 Ops.Cal.Atty.Gen. 305 (1982) ("the ability to control the salary or other terms of employment of an employee falls within the ambit of section 1090"); *Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 110 Cal.Rptr.2d 552 (Section 1090 applies to a public official's own employment contract); 73 Ops.Cal.Atty.Gen. 191 (1990) (there is an "obvious" conflict under Section 1090 for a teacher who is elected to a school board, as the school board makes decisions regarding teacher salaries); 66 Ops.Cal.Atty.Gen. 376 (1983) (where employment agreement provides for increase in city officers' compensation based on added new tax base in redevelopment zone, officers' involvement in negotiating contracts between city and landowners or developers that would increase value of tax base, and therefore increase officers' compensation, would violate Section 1090 because "[t]heir personal interests in compensation are likely to conflict with the faithful performance of their duties").

There are no reported cases dealing with compensation-related conflicts of interest in the context of an independent salary survey such as that mandated by SB 257. On the one hand, the fact that the entity conducting the survey is independent distinguishes the instant situation from the fact patterns arising in the reported cases. On the other hand, even independent surveys may be influenced by input from interested parties and the courts have applied a liberal interpretation to the concept of "making" a contract. Accordingly, it could be reasonably determined that Ms. Parker has a financial interest governed by Section 1090 in her own salary increase and that Section 1090 could prohibit Ms. Parker from involvement in the preliminary discussions, negotiations, compromises and reasonings relating to the contract.

**(c) The Statutory Exceptions to Section 1090 Do Not
Appear to Apply to the Proposed Contract.**

There are a limited number of expressly defined "remote interests" and "noninterests" that are exempted from Section 1090's general prohibition. Gov. Code §§ 1091, 1091.5. These statutory exemptions to Section 1090 are strictly limited to the specified types of interests, and do not apply to other, similar types of interests. 85 Ops.Cal.Atty.Gen. 34.

It does not appear that any of the remote interests or noninterests would exempt the proposed contract from the Section 1090 prohibition. We briefly address these exemptions below.

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(1) Remote Interests under Section 1091.

Section 1091 defines 14 types of "remote interests." If an officer has one of these defined remote interests, the government agency may enter into the contract if the officer (1) discloses his or her financial interest in the contract to the public agency, (2) such interest is noted in the body's official records, and (3) the officer completely abstains from any participation in the making of the contract. See 83 Ops.Cal.Atty.Gen. 246 (2000); 78 Ops.Cal.Atty.Gen. 235; 65 Ops.Cal.Atty.Gen. 305 (1982).

Section 1091(B)(13) defines a remote interest to include "[t]hat of a person receiving salary, per diem, or reimbursement for expenses from a government entity." On its face, this would appear to apply to Ms. Parker. However, the California Attorney General has "interpreted this exception as encompassing a public official's employment with *another* government agency seeking to contract with the legislative body of which the official is a member." 89 Ops.Cal.Atty.Gen. 217 (2006) (citations omitted). The exception does not apply to a situation where, such as here, a person would be involved in setting his or her own salary while fulfilling public duties prescribed by statute.

From our understanding of the facts, it appears that none of the remaining 13 remote interests defined in Section 1091 would apply to the salary increase.

(2) Noninterests under Section 1091.5.

Section 1091.5 defines 13 types of "noninterests." Where an officer or employee has a noninterest, the agency may enter into a contract without the abstention of the officer or employee, and generally without any type of disclosure (unless specifically required pursuant to the particular defined noninterest). See *City of Vernon v. Central Basin Mun. Water. Dist.* (1999) 69 Cal.App.4th 508; 83 Ops.Cal.Atty.Gen. 247; 78 Ops.Cal.Atty.Gen. 362 (1995).

Under Section 1091.5(a)(9), one of these defined noninterests is:

That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

While this exception appears on its face as if it could apply to Ms. Parker's involvement in the salary process, this exception allows "a government employee who serves on the board of another public agency to vote on a contract between the agency and his government employer except when the contract involves his particular employing unit." *People v. Gnass* (2002) 101

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Cal.App.4th 1271, 1304, 125 Cal.Rptr.2d 225 (quoting 78 Ops.Cal.Atty.Gen. 362, 369-370 (1995).) In other words, this is similar to the exception discussed above under Section 1091, and applies only to contracts between two government agencies. The difference is that the noninterest exception under 1091.5 only applies where the contract does not involve the employee or officer's own employing unit. In any case, this exception does not apply to the CalHFA salary increase.

From our understanding of the facts, it does not appear that the other 12 noninterests could apply to the Ms. Parker's participation in the CalHFA salary increase.

(d) The Common Law Rule of Necessity.

Even though Section 1090 generally prohibits participation in the contracting process where a public official has a financial interest, there is a very narrow "rule of necessity" exception under the common law that allows such participation in limited circumstances. See, e.g., 69 Ops.Cal.Atty.Gen.102 (1986) (citing 67 Ops.Cal.Atty.Gen. 369, 378 (1984).) With respect to voting members of the Board, the rule of necessity allows the Board to take an action where the body would otherwise be disqualified if the disqualification would make it impossible for the public agency to fulfill one of its vital public duties. *Finnegan v. Schrader* (2001) 91 Cal.App.4th 581. "The rule is well settled that where an administrative body has a duty to act upon a matter which is before it and is the only entity capable to act in the matter, the fact that the members may have a personal interest in the result of the action taken does not disqualify them to perform their duty. It is a rule of necessity which has been followed consistently." *Eldridge v. Sierra View Local Hospital District*, 224 Cal.App.3d 311, 322 (1990) quoting 70 Ops.Cal.Atty.Gen. 45, 48 (1987).

Most analyses of the rule of necessity address a situation where, unlike here, the official in question is a voting member of the affected governing body. However, the Attorney General and the courts have occasionally addressed situations involving a person who was the day-to-day administrator of an agency. For example, the opinion in 65 Ops.Cal.Atty.Gen. 305 (1982) concerned a county superintendent of schools. The superintendent was the employer and appointing power for the civil service employees assigned to his office. The superintendent married a school district civil service employee. The salary provisions of a Memorandum of Understanding with the civil service employees in his office was subject to modification shortly after the marriage, and the question was raised as to whether Section 1090 would prohibit the superintendent from negotiating salary adjustments for civil service employees, as this would affect his spouse's income (and therefore his own, under California's community property laws).

The Attorney General first concluded that "changes in the MOU could involve conflicts of interest with respect to the superintendent and his wife under section 1090" However, the Attorney General then quoted a court's application of the rule of necessity to the California

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Insurance Commissioner where the Commissioner was appointed conservator of Pacific Mutual, an insolvent insurer with which he held policies:

The Legislature has directed that certain provisions of the Insurance Code . . . are to be carried into effect by the commissioner. If the commissioner were disqualified to act with respect to delinquent insurers in which he holds policies, such insurers and their creditors and policyholders would be deprived of many benefits of the code. No other officer is authorized to perform the commissioner's duties, and if he cannot act, his agents or deputies would likewise be disqualified. In such a situation it must be assumed that the Legislature intended that the commissioner act regardless of the possibility that he might hold policies in the delinquent company.

Id. (quoting *Caminetti v. Pac. Mutual Ins. Co.* (1943) 22 Cal.2d 344).

The Attorney General concluded that, based on the reasoning in *Caminetti*, the superintendent could take action with respect to his employees "in cases where only he can legally act, such as with respect to the MOU. Otherwise, no action could or would be taken. All of the employees of his office would then be denied the benefits of collective bargaining under the Rodda Act or the benefits which might be derived from wage adjustments under the current memorandum of understanding. The need for the application of the 'rule of necessity' in such cases is patent." *Id.*

Similarly here, it appears that Ms. Parker, as Executive Director, can take action with respect to contracts that affect CalHFA's employees (and her) where only she can act. As the executive director of the agency, she must, by statute, "subject solely to supervision by the board, administer and direct the day-to-day operations of the agency." Health and Safety Code § 50908. The executive director may "employ technical experts and other employees as may, in his or her judgment, be necessary for the conduct of the business of the agency." Health and Safety Code § 50910. The executive director may employ a general counsel and bond counsel. Health and Safety Code § 50911. While the director of financing is appointed by the Governor, that person serves at the pleasure of the executive director. Health and Safety Code § 50912.

Conversely, the board has relatively little statutory authority. The statutes broadly state that the agency is "administered" by the Board, and that the Board provides "supervision" to the executive director. Health and Safety Code §§ 50901, 50908. However, the Board has only two specific powers—first, the power to set the compensation of key exempt management, and second, the power to authorize "any sale of obligations or securities or other debt obligations and [approval of] other major contractual agreements." Health and Safety Code §§ 50909, 50914. The contracting power of the Board is somewhat limited, as the executive director may approve

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“[a]ny other contractual agreements or debt obligations” pursuant to regulations adopted by the Board. *Id.*

This statutory framework provides for an executive director imbued with strong day-to-day authority over the Agency and a Board with limited authority. As we were informed during the interview process, this framework apparently reflects the Legislature’s intent to minimize the ability of political appointees to the Board to alter agency direction or actions and to build in stability and consistency for the benefit of Wall Street and other investors. At the same time, the framework practically requires that the executive director be involved and provide leadership over all day-to-day processes, including the salary survey process.²⁵ Indeed, under the newly enacted Under Section 50909(b)(1), while the “board” is directed to set compensation, the “agency” is required to cause salary surveys to be conducted by independent outside advisors.²⁶ Because Ms. Parker is the person directly charged with the administering and directing the day-to-day operations of the Agency, she (or her designee) are authorized to legally act to “cause” the salary surveys to be conducted by entering into a contract for a survey.²⁷

In fact, under current law, if the Executive Director had not caused the salary surveys to be conducted in accordance with Section 50909, arguably “no action could or would be taken. All of the [key exempt management] of [her] office would then be denied the benefits of” the salary increases provided for by Section 50909. 65 Ops.Cal.Atty.Gen. 305, *supra*, (quoting

²⁵ While the Board could determine that the contract for a salary survey is a “major contractual agreement” requiring Board approval, this would not change the Executive Director’s responsibility for the administration and implementation of the agreement, absent further Board direction.

²⁶ We note that SB 257 did not take effect until January 1, 2007, after the Executive Director’s involvement in the preliminary discussions and formalities of the survey. However, the Board effectively ratified the undertaking of the salary survey by its approval of the compensation ranges and levels at its January 18, 2007 meeting.

²⁷ Our interviews revealed that senior staff of CalHFA understood the language of SB 257 to authorize management to cause the salary survey to be conducted and present the results to the Board to enable the Board to carry out its legislative mandate to set compensation. This understanding was consistent with past practice of staff on other CalHFA business issues to present a polished work product for review by the Board. Management’s understanding of SB 257 is not an unreasonable interpretation of the Legislature’s intent insofar as it directed the “agency” to perform the task of causing the salary survey to be done and has elsewhere authorized the Executive Director to implement tasks of this nature. Furthermore, the roles of the “agency” and the “Executive Director” are so intertwined that the Legislature in at least one instance has used the terms interchangeably to describe who may appoint bond counsel. See Health and Safety Code § 50911 (“Notwithstanding Sections 11042 and 11043 of the Government Code, the executive director may appoint as bond counsel for the agency an attorney or attorney/s. . . . If the agency appoints more than one bond counsel for a bond issue, the combined fees paid to all bond counsel shall not exceed those fees that would have been paid had only one bond counsel been appointed.”) (emphasis added).

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Caminiti v. Pac. Mutual Ins. Co. (1943) 22 Cal.2d 344). Without her involvement and direction, it would have been difficult, at best, to employ a firm such as Watson Wyatt. Effectively only the executive director and/or her staff would be able to provide job descriptions for use in a salary survey, provide reliable information about the Agency itself, and provide information on other state and local housing agencies. As noted above, it appears that the information provided to Watson Wyatt about other state and local housing agencies was neutral and that an independently published financial analysis covering all 50 states' housing finance agencies was given to Watson Wyatt, forming the basis for that firm to identify appropriate participants. (Appendix 14) Watson Wyatt independently made the decisions regarding which of these agencies were the most appropriate comparison group in terms of size and complexity.

It is also notable that Ms. Parker took the extra step of employing a retired annuitant to directly oversee the salary survey process. This was a step not required by the statute, and yet it served to establish some distance between Ms. Parker and the overall process.

In short, even if Section 1090 would normally prohibit Ms. Parker from involvement in the salary survey process, the rule of necessity provides that because Ms. Parker had a duty and authority to act upon the matter, "the fact [she] may have a personal interest in the result of the action taken does not disqualify [her] to perform [her] duty." *Eldridge v. Sierra View Local Hospital District*, 224 Cal.App.3d at 322 (citation omitted).

Notwithstanding the conclusion that the Executive Director's involvement in the salary survey process is sanctioned under current laws governing CalHFA, the better practice is to remove any interested parties as much as possible from all phases of the compensation setting process, as discussed below.

V. RECOMMENDATIONS FOR FUTURE COMPENSATION SURVEYS

We understand that because of the very recent enactment of SB 257, the above described events reflect the first time that CalHFA has embarked on a process to set management compensation through the use of an independent salary survey company. The CalHFA Board Chair, John Courson, should be commended for taking the initiative to lead this inaugural process as Chair of the Compensation Committee. As with all first time endeavors, there are many lessons to be learned so that the process may improve over time. In that spirit, we make a series of recommendations and observations below.

We believe that CalHFA's decision to utilize a retired annuitant in the survey process was a smart and positive step in an effort to provide separation between key management and the formation and implementation of the salary survey conducted pursuant to Health and Safety

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Code section 50909. Nonetheless, as indicated above, affected staff did have some level of direct involvement in the survey process which, while seemingly authorized under the letter of the law embodied in section 50909, should be avoided as much as practicable in future compensation setting exercises. In addition, the involvement of interested Board members in the “policy and decisions of the Board” is authorized by statute under Health and Safety Code sections 50902 and 50904, but we believe that Board members doing business with the Agency should refrain in the future from participating in compensation recommendations to avoid even the potential appearance of conflict.

Accordingly, we propose the following in order to insulate the compensation setting process under Health and Safety Code section 50909, and to avoid exposing CalHFA management and Board of Directors members to future claims of conflict of interest and/or the appearance of a conflict:

- The Board of Directors of CalHFA should resolve to treat any agreement that relates to the “compensation of key exempt management,” as those terms are used in Health and Safety Code section 50909(a), as a “major contractual agreement” pursuant to Title 25 of the California Code of Regulations, section 13302(a). Accordingly, the CalHFA Board of Directors should be required to approve any such agreement, including but not limited to any contract for the use of independent outside advisors to conduct salary surveys as provided in Health and Safety Code section 50909(b)(1). Such approval should occur before an independent outside advisor may commence work on conducting a salary survey pursuant to section 50909(b)(1).
- A Compensation Committee of the CalHFA Board of Directors should be tasked with an independent review prior to presentation to the Board of Directors for approval of any agreement that relates to the compensation of key exempt management as described above, as well as any related scope of work documents, Requests for Proposal and responses thereto. The description of the scope of work and instructions given to a salary survey contractor may have an impact on the product delivered, and should bear the imprimatur of the Board of Directors prior to commencement of a salary survey.
- Key exempt management, as beneficiaries of compensation determinations made under Health and Safety Code section 50909(a), should avoid any direct involvement with an entity hired by CalHFA to conduct salary surveys pursuant to section 50909(b)(1), and instead an independent third party, such as a retired annuitant or independent contractor (or willing Board member), should perform necessary tasks on behalf of CalHFA to accomplish the survey, from the formation of a Request for Proposal through finalization of the survey document.

Such an independent third party should be expected to report only to the Compensation Committee and not to management of CalHFA.

- The authority of the Executive Director to sign contracts on behalf of CalHFA should be delegated exclusively to the Chair of the Compensation Committee or other designee(s) of the Chair, in those instances where such a contract relates to the compensation of key exempt management. If necessary, CalHFA should seek to amend Title 25 of the California Code of Regulations, including but not limited to sections 10002 and 13302, to implement this recommendation.

The members of the Compensation Committee, tasked to oversee the process for determining compensation of key exempt management pursuant to Health and Safety Code section 50909(a), should be a person or persons with business dealings with CalHFA. While Board members are entitled to engage in business dealings with CalHFA under prescribed circumstances without violating conflict of interest rules, it may create an appearance of impropriety if a Board member is both legally pursuing business with the Agency and simultaneously overseeing the process to determine compensation for management of the Agency – the very management that may have to make decisions impacting the business of the Board member.



C A L I F O R N I A D E P A R T M E N T O F
Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309



California Housing Finance Agency

1415 L Street, Sacramento, CA 95814
(916) 321-4638

August 23, 2007

Dear County Mental Health Director:

We are pleased to announce the release of the Mental Health Services Act (MHSA) Housing Program Application. California counties have committed an initial \$400 million for the program, and this application represents an historic partnership at the state and local level. This program was made possible with the leadership and support of Governor Arnold Schwarzenegger and the Mental Health Services Oversight and Accountability Commission.

To receive MHSA Housing Program funding, each county must have a fully executed MHSA Performance Contract amendment authorizing the state to administer this program on its behalf. Each county must submit an MHSA Housing Program application to both the Department of Mental Health (DMH) and the California Housing Finance Agency (CalHFA). MHSA Housing Program applications will be considered updates to a county's Community Services and Supports (CSS) component of its Three-Year Program and Expenditure Plan. The planning process must comply with the regulations found in Title 9 California Code of Regulations Section 3100 et seq.

DMH, CalHFA, and the County Mental Health Directors Association (CMHDA) are looking forward to establishing an MHSA Housing Program which will continue to transform the mental health system, offering consumers housing and supportive services that will enable them to live more independently in our communities.

The MHSA Housing Program Application can be accessed on both the DMH and CalHFA Websites.

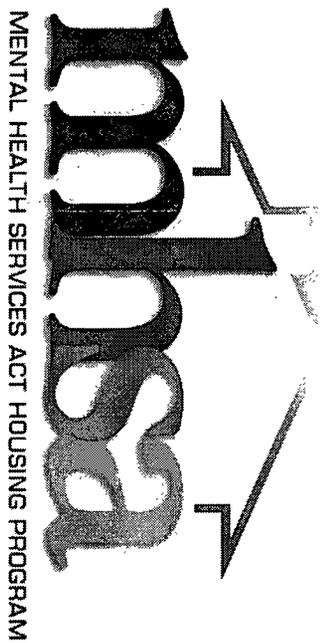
Sincerely,

STEPHEN W. MAYBERG, Ph.D.
Director
Department of Mental Health

THERESA A. PARKER
Executive Director
California Housing Finance Agency

Enclosure

cc: The Honorable Darrell Steinberg
Members, CMHDA Executive Committee
Ann Arnell-Py
Gale Batalle
Sheri Whit



**Mental Health Services Act
Housing Program
Application**

August 6, 2007

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1.0 Introduction

The California Department of Mental Health (DMH), the California Housing Finance Agency (CalHFA) and the County Mental Health Directors Association are pleased to announce a new housing program under which up to \$75 million in Mental Health Services Act (MHSA) funds will be allocated each year to finance the capital costs associated with development, acquisition, construction and/or rehabilitation of permanent supportive housing for individuals with mental illness and their families, especially including homeless individuals with mental illness and their families. The MHSA Housing Program will also make available up to an additional \$40 million per year in capitalized operating subsidies. Eight percent of both capital funds and capitalized operating subsidies, currently estimated at \$9.2 million annually, will be set aside for small counties to ensure that the program addresses their unique needs.

Executive Order S-07-06, signed by the Governor on May 12, 2006, mandated development of the MHSA Housing Program, with the stated goal of creating 10,000 additional units of permanent supportive housing for this population. The program will be jointly administered by DMH and CalHFA. During the application review and evaluation process, CalHFA will underwrite requests for capital funds and capitalized operating subsidies, while DMH will evaluate each applicant's proposed target population and supportive services plan. Once funds are awarded, CalHFA will oversee all housing and financial aspects of the development and DMH will oversee provision of services, including continuing assessment as to whether the target population served continues to meet MHSA Housing Program requirements.

Funds provided under this program must serve the MHSA Housing Program target population as specified in the Executive Order and defined in further detail below. Capital funds may be used for either Rental Housing Developments or Shared Housing Developments. For Rental Housing Developments, applicants will also be required to obtain capital funds from a range of programs administered by other agencies including, but not limited to, the Department of Housing and Community Development (HCD), CalHFA, the Tax Credit Allocation Committee (TCAC), localities, and the federal Department of Housing and Urban Development (HUD). However, for Shared Housing Developments, funds from this new program may be used to cover all capital costs up to the funding limits specified in this application.

While the MHSA Housing Program application process, as described in this application package, is the same for both large and small counties, a more flexible process is available to small counties applying for program funds. Specifically, small counties may request exceptions from the various requirements of this application. In addition, enhanced technical support will be available to small counties upon request, to assist them in completing the application process. Section 2.16, Small Counties, provides further information on the application process for small counties.

The MHSA asks the State of California to transform the way in which it has delivered mental health services to individuals with serious mental illness. Over the past decade or more, this transformation had already begun through the implementation of several pilot programs, each with the goal of moving beyond the mental health clinic setting to offer a much wider array of services and supports to consumers in community settings, enhancing their recovery efforts and their opportunities for independent living.

The MHSA Housing Program embodies both the individual and system transformational goals of the MHSA through a unique collaboration among government agencies at the local and State level. The partners in this system collaboration include CalHFA and HCD, with their housing and financial expertise; DMH, with responsibility for overseeing the mental health system and ensuring that consumers have access to an appropriate array of services and supports; and county mental health departments, which have ultimate responsibility for the design and delivery of mental health services and supports throughout the State. Through this collaboration, the MHSA Housing Program will continue to transform the mental health system, offering consumers housing and supportive services that will enable them to live more independently in our communities.

1.1 Program Summary

The program makes permanent financing and capitalized operating subsidies available for the purpose of developing permanent supportive housing, including both rental housing and shared housing, to serve persons with serious mental illness who are homeless or at risk of homelessness and who meet the MHSA Housing Program target population description. A total of \$400 million has been set aside for initial funding of the program. This amount will fund both capital costs and capitalized operating subsidies. However, the intention is to continue funding the program on an ongoing basis at the levels described in Section 1.0 above as long as the Mental Health Services Act continues to generate sufficient revenues and the program is effective in meeting the needs of the counties and the target population.

1.2 Organization of the Application Package

This application package is divided into sections as follows:

- Section 1: Introduction
This section describes the purposes and objectives of the MHSA Housing Program.
- Section 2: Development Requirements
This section outlines specific requirements applicable to all MHSA Housing Program developments.
- Section 3: Other Considerations
This section presents other issues to consider when applying for MHSA Housing Program funds.
- Section 4: Submission Requirements
This section delineates requirements for submission of an application. This includes a checklist of documents to be submitted, the order in which they must be submitted, and formatting requirements and binding requirements.
- Section 5: CalHFA Underwriting Process
This section describes the general process that will be used by CalHFA to underwrite the financial aspects of each application for MHSA Housing Program funds.

Section 6: DMH Application Approval Process
This section describes the general process that will be used by DMH to review and approve the target population and supportive services aspects of each application for MHSA Housing Program funds.

Section 7: Attachments
This section includes all attachments referenced in this application package.

2.0 Development Requirements

Developments must meet the following requirements in order to be considered for funding under this program.

2.1 MHSA Community Services and Supports Plan

In order for a development to be eligible for MHSA Housing Program funding, it must be consistent with the priorities identified in the Community Services and Supports (CSS) component of the county's Three-Year Program and Expenditure Plan. This requirement is designed to foster the goal of establishing and strengthening partnerships at the local/county level, resulting in a development that reflects local priorities while expanding safe, affordable housing options for individuals with serious mental illness who receive services through the MHSA. Additionally, prior to approval of any application for MHSA Housing Program funding, the county mental health department must have an executed MHSA Performance Contract (or other successor document, as prescribed by DMH) with the necessary language providing authority for the transfer of funds to CalHFA. For purposes of this document, a county mental health department includes the City of Berkeley and Tri-Cities mental health departments pursuant to Welfare and Institutions Code Section 5897(a).

2.2 MHSA Housing Program Target Population

The State of California recognizes that there is currently, and will continue to be for the foreseeable future, inadequate funding to provide permanent supportive housing for all those with serious mental illness who need it. The MHSA Housing Program is primarily intended to provide funding to create permanent supportive housing with services for individuals with serious mental illness who are homeless. Secondly, and in keeping with the values of the MHSA, the State believes that individuals should not have to 'fail first' and become homeless in order to become eligible for supportive housing; rather, individuals identified as "at risk of homelessness" are eligible for the housing and supports available under this program. Please note that "at risk of homelessness," as used here, is a definition unique to the MHSA Housing Program and is not applicable to other local, State or federal housing programs.

DMH has defined the MHSA Housing Program target population as low-income adults, or older adults with serious mental illness, and children with severe emotional disorders and their families who, at the time of assessment for housing services, meet the criteria for MHSA services in their county of residence and are homeless or at risk for homelessness, as defined below. The county mental health department, or its designee, will certify the target population eligibility of individuals and/or families.

For the purposes of this program, the following definitions and criteria apply:

1. Adults or Older Adults means adults with serious mental illness as defined in Welfare and Institutions Code Section 5600.3 (b) (1).
2. Children or adolescents with severe emotional disorders as defined in Welfare and Institutions Code 5600.3 (a) (1), and their families.
3. "Homeless" means living on the streets, or lacking a fixed, regular, and adequate night-time residence. (This includes shelters, motels and living situations in which the individual has no tenant rights.)
4. Individuals who are "at risk of homelessness" include:
 - Transition-age youth (as defined in Welfare and Institutions Code Section 5847(c), and in Title 9, California Code of Regulations, Section 3200.80) exiting the child welfare or juvenile justice systems
 - Individuals discharged from institutional settings including:
 - Hospitals, including acute psychiatric hospitals, psychiatric health facilities (PHF), skilled nursing facilities (SNF) with a certified special treatment program for the mentally disordered (STP), and mental health rehabilitation centers (MHRC)
 - Crisis and transitional residential settings
 - Individuals released from local city or county jails
 - Individuals temporarily placed in Residential Care Facilities upon discharge from one of the institutional settings cited above
 - Individuals who have been assessed and are receiving services at the county mental health department and who have been deemed to be at imminent risk of homelessness, as certified by the county mental health director.

2.3 Housing Options

MHSA Housing Program developments must offer permanent supportive housing to the target population. Supportive housing means housing with no limit on length of stay that is occupied by the target population and that is linked to on-site or off-site services. These services must help the tenant to retain the housing, support recovery and resiliency, and maximize the ability to live and work in the community.

The types of permanent supportive housing that may receive funding under the MHSA Housing Program include:

- Apartment buildings
- Duplexes, triplexes and four-plexes
- Single-family homes and condominiums

The development may be either a:

- **Single Population Development**—Development in which all units are dedicated to housing the MHSA Housing Program target population, or a
- **“Mixed Population” Development**—Development that has set aside a specific number of units within a development to house the MHSA Housing Program target population. The other units are open to occupancy by persons who are not members of the MHSA Housing Program target population.

Housing types that are eligible for MHSA Housing Program funding fall into one of two categories of housing developments—Rental Housing Developments and Shared Housing Developments. Each of these development categories is described in detail in the following subsections.

2.3.1 Requirements for Rental Housing Developments

Rental Housing Developments are apartment buildings that include five or more separate apartments, each with its own lease. Each MHSA Housing Program targeted apartment must be occupied by a qualifying member of the MHSA Housing Program target population, as certified by the sponsoring county mental health department. All individuals age 18 or older who will occupy the unit must sign the lease. For Rental Housing Developments, a unit is defined as a separate apartment.

Rental Housing Developments may include both general occupancy developments and special occupancy developments. Special occupancy developments include either senior housing or housing for homeless youth, as defined in the California Government Code, Section 11139.3. Each apartment must include, at a minimum, a sleeping area, a kitchen area and a bathroom, in order to provide a dignified housing situation for the residents. All Rental Housing Developments must set aside adequate space for supportive services staff and programming.

In addition, in developments with 5 to 100 units, at least 10 percent of the units, but no fewer than 5 units per development, must be set aside for members of the MHSA Housing Program target population. In developments with more than 100 units, at least 10 units must be set aside for members of the MHSA Housing Program target population.

All Rental Housing Developments must meet the requirements of the California Housing Finance Agency Architectural Guidelines, which may be obtained from CalHFA's website at www.calhfa.ca.gov.

2.3.2 Requirements for Shared Housing Developments

The Shared Housing Development component of the MHSA Housing Program has been designed as a shared “house-mate” program for unrelated adults who are members of the MHSA Housing Program target population. For Shared Housing Developments, a unit is defined as a traditional residential unit that has a bathroom and a kitchen, such as a single family home, a condominium or one-half of a duplex. The following requirements apply:

- Shared Housing Developments are developments that contain one or more traditional residential units (i.e., contain a kitchen and at least one bathroom).
- Each bedroom in a Shared Housing Development must be targeted to provide shared housing for a member of the MHSA Housing Program target population.
- Shared Housing Developments generally consist of two- to four-unit buildings, including duplexes, triplexes and four-plexes, provided that all units in the development are targeted for use as shared housing for a member of the MHSA Housing Program target population.
- Developments with five or more units may be permitted on an exception basis.
- Single-family homes and condominiums may also qualify as Shared Housing Developments, provided they have at least two bedrooms.
- One-bedroom or studio units in duplexes, triplexes and four-plexes may qualify as Shared Housing units if all two-bedroom and larger units in the development are Shared Housing units.

All units in a Shared Housing Development must be rented to, and shared by, two or more unrelated adults, each of whom is a member of the MHSA Housing Program target population. For purposes of this program, an adult is defined as an individual who is either at least 18 years of age or who is younger than 18 years of age and has been emancipated. While this program is intended primarily as a program for unrelated adult "house-mates," nothing in this definition excludes the spouse, adult partner or child of an MHSA Housing Program-qualified tenant from sharing the bedroom of that tenant, up to housing occupancy limits. To qualify for funding under this program, the Shared Housing Development must provide a lease and a separate lockable bedroom for each MHSA Housing Program tenant; the MHSA Housing Program tenant must be responsible for paying rent; and all bedrooms in each unit must be targeted for occupancy by a member of the MHSA Housing Program target population.

All Shared Housing Developments must meet the requirements of the CalHFA Architectural Guidelines for Shared Housing Developments, which may be obtained from CalHFA's website at www.calhfa.ca.gov.

2.4 Occupancy and Rent Requirements

All MHSA Housing Program units must be targeted for occupancy to MHSA Housing Program target population households. Area median income information, and rent and income limits by county, as published by HUD, may be obtained from CalHFA's website at www.calhfa.ca.gov. The following income and rent limits apply:

- All MHSA Housing Program targeted units in Rental Housing Developments must be targeted to households earning 50 percent or less of the area median income (as adjusted by household size).
- All MHSA Housing Program targeted units (bedrooms) in Shared Housing Developments must be targeted to households earning 50 percent or less of the area median income (as adjusted by household size).
- Applicants for MHSA Housing Program funds are encouraged to restrict occupancy in MHSA Housing Program targeted units and units to MHSA Housing Program target population households earning 30 percent or less of area median income, and to restrict rents to 30 percent or less of area median income (as adjusted by household size).

- For units with an MHSA Housing Program capitalized operating subsidy, the tenant portion of the restricted rent must be set no lower than 30 percent of the current Supplemental Security Income/State Supplemental Program (SSI/SSP) grant amount for a single individual living independently, or 30 percent of total household income, whichever is higher.
- Rents in MHSA Housing Program targeted units in Rental Housing Developments must be restricted to 30 percent or less of area median income (as adjusted by household size).
- Rents in MHSA Housing Program targeted units (bedrooms) in Shared Housing Developments must be restricted to 30 percent or less of area median income (as adjusted by household size).

2.5 Eligible Applicants/Developers

An application for MHSA Housing Program funding may be submitted only by a county mental health department. However, funds may be distributed only to a qualified borrower in the form of a loan (and in some cases, as capitalized operating subsidies). Therefore, the application must be prepared and signed by both the county and the developer, and will serve as the loan (and capitalized operating subsidy) application from the developer, for the ultimate borrower.

2.5.1 Applications from County Mental Health Departments

In signing and submitting the application, the county mental health director will signify that the county mental health department:

- Approves the use of its allotted MHSA Housing Program funds for the development described in the application,
- Agrees to DMH's transfer of the county's MHSA funds to CalHFA for administration of MHSA Housing Program loans, and
- Agrees to permit CalHFA to establish the capitalized operating subsidy amount, and
- Commits to providing supportive services to the target population for the full term of the MHSA Housing Program loan.

In addition, the county mental health director will be required to sign Attachment H, County Mental Health Department Sponsorship and Services Verification Form, specifically committing support and services to the development.

2.5.2 Qualified Developers

Qualified developers include any of the following:

- 1) Developers with a track record of successful housing development and a history of serving the target population,
- 2) Developers with a track record of successful housing development but with no history of serving the target population, but with a strong contract/Memorandum of Understanding with a qualified service provider and property manager, and the assistance of qualified consultants with a history of successfully working with developers to house the target population,
- 3) A qualified supportive services provider with a joint venture developer partner with a history of successful development, who has entered into a contract/Memorandum of

Understanding (acceptable to CalHFA) with a qualified property manager, and has the assistance of qualified consultants who have a history of successfully working with similar joint venture partners to house the target population,

- 4) A qualified supportive services provider with a qualified development team that has a history of successful development and that has entered into a contract/Memorandum of Understanding (acceptable to CalHFA) with a qualified property manager, or

- 5) For a Shared Housing Development that consists of a condominium, single family home, duplex, triplex and/or four-plex, an appropriate agency of the county.

The developer and its affiliate organizations will be evaluated both for their ability to successfully develop and manage the real estate component of the development, and for their ability to partner with a primary service provider to deliver high-quality services to the target population. The developer will also be required to meet CalHFA's underwriting criteria, as discussed in Section 5.0 of this application.

The ultimate borrower must be one of the following:

- a limited partnership (LP) (the managing general partner of the LP must be a 501(c)(3) corporation or a limited liability company (LLC) whose sole member or members are 501(c)(3) corporations),
- a 501(c)(3) corporation,
- a LLC whose sole member or members are 501(c)(3) corporations,
- an affiliate of a local redevelopment agency,
- an affiliate of the county created to hold properties financed with MHSA Housing Program funding, or
- an affiliate of a local housing authority created to hold MHSA Housing Program properties.

The borrower also must be organized as either a single asset entity (in the case of a LP or LLC), or as a separate legal entity that only holds properties that have MHSA Housing Program funding, as appropriate.

2.6 Funding Limits

Funding available under the MHSA Housing Program will be subject to two separate limits—an overall county limit and a per-development limit.

1. DMH will apportion a specific amount of MHSA Housing Program capital (loan) and capitalized operating subsidy funds to each county. Thus, the total amount of all loans and capitalized operating subsidy awards made under the program in a given county at this time will be limited to the allotted amount provided to that county under the DMH formula, plus any interest earned while the funds are held by CalHFA. The county may use other funding sources for this program in addition to its allotted MHSA Housing Program funds. While CalHFA will hold the MHSA Housing Program funds until they are distributed in the form of capital funds or capitalized operating subsidies, funding will be awarded based strictly upon the amounts apportioned to each county by DMH. For further details on funding availability by county, see Attachment J, County Planning Estimates.

2. Funding will also be subject to a per-development limit, for both capital costs and capitalized operating subsidies. These funds will be made available based on the number of units restricted to the MHSA Housing Program target population, not on the total number of units in the proposed development.
 3. County mental health departments, at their option, may use their capitalized operating subsidy funds for capital development costs instead of operating subsidies.
 4. County mental health departments may, at their option, use interest earned on funds held by CalHFA for capital costs or capitalized operating subsidies.
- Further details regarding funding limits on capital costs and capitalized operating subsidies are presented in Sections 2.7 and 2.8 below.

2.7 Funding Limits on Capital Costs

The MHSA Housing Program will initially make available approximately \$267 million in capital costs. These funds will be allocated to counties as described in Section 2.6 above to finance the capital costs associated with development, acquisition, construction and/or rehabilitation of permanent supporting housing for the target population. Per-development funding limits on capital costs for Rental Housing Developments and Shared Housing Developments are described in Subsection 2.7.1 and 2.7.2.

2.7.1 Capital Costs—Rental Housing Developments

A county may apply for up to one-third of the capital costs of the MHSA Housing Program restricted units in a Rental Housing Development (developments with five or more units) to a maximum of \$100,000 per targeted unit. At a county's request, amounts greater than \$100,000, up to one-third of total development costs per targeted unit, will be considered on an exception basis. The loan term for capital funds awarded under this program will be 20 years, or longer if required by other funding sources.

Other funds may be obtained from such sources as grants, tax credits, other deferred, forgivable or residual receipts loans from governmental and private loan sources, and other county mental health funds.

2.7.2 Capital Costs—Shared Housing Developments

A county may apply for \$100,000 per targeted bedroom in a Shared Housing Development, up to 100 percent of capital costs, provided each bedroom is targeted to a tenant who is a member of the MHSA Housing Program target population. The loan term for capital funds awarded under this program will be 20 years, or longer if required by other funding sources or if tax credits are involved.

2.8 Funding Limits on Capitalized Operating Subsidies

The MHSA Housing Program will initially make available approximately \$133 million in capitalized operating subsidies. Capitalized operating subsidy funds may be provided only to those developments that:

- Receive funds for capital costs from the MHSA Housing Program,
- Require capitalized operating subsidies to cover their operating costs,

- Request capitalized operating subsidies for those MHSA Housing Program target population units housing individuals whose combined income is 50 percent or less of area median income,
- Have applied for but have been denied rental or operating subsidies from all other available and appropriate sources (for at least one application cycle), including project-based Section 8 and all HUD McKinney programs such as Shelter Plus Care and the Supportive Housing Program, and
- Set the tenant portion of the restricted rent for units with an MHSA Housing Program capitalized operating subsidy at no lower than 30 percent of the current SS/SSP grant amount for a single individual living independently, or 30 percent of total household income, whichever is higher.

CalHFA will provide conditional commitments to developments that apply for these other subsidies, but will not execute the MHSA Housing Program capitalized operating subsidy contract or distribute MHSA Housing Program capitalized operating subsidy funds until the development has received a formal denial of its other rental or operating subsidy application(s). Preference in allocating capitalized operating subsidies will be given to Rental Housing Developments.

Capitalized operating subsidies for both Rental Housing Developments and Shared Housing Developments are expected to be available for a period of 18 to 20 years per development (depending upon availability of funds). It will be the responsibility of the county mental health department to apply for a capitalized operating subsidy for a specific development. CalHFA will determine the amount of capitalized operating subsidy based on the development's first-year operating budget, a two-and-one-half (2.5) percent annual income escalator, a three-and-one-half (3.5) percent annual cost escalator, and the amount of interest earned on the operating reserve account. CalHFA will keep the awarded capitalized operating subsidies in reserve in an interest-bearing account and will distribute them quarterly to borrowers.

Capitalized operating subsidy funds are only available while a member of the MHSA Housing Program target population resides in the unit (that is, not during months in which the target population member has moved out of the unit). Subsidies will continue if the MHSA Housing Program target population member is institutionalized for up to three months. If family members who are not members of the MHSA Housing Program target population continue to reside in the unit after the target population member is no longer in residence, rent for the unit will increase to market rent or the highest restricted rent following a 90-day grace period. Capitalized operating subsidies will continue until the end of the grace period. In single population developments, the family members will also be required to relocate. In mixed population developments, the family members may be able to remain, provided there is another unit available for MHSA Housing Program target population members. Capitalized operating subsidies will continue for two months upon vacancy of an MHSA Housing Program unit that receives capitalized operating subsidies. For further details, see MHSA Housing Program lease and eviction procedures, which are available on the CalHFA website at www.calhfa.ca.gov.

CalHFA will reconcile capitalized operating subsidy payments with actual operating costs on an annual basis. MHSA Housing Program capitalized operating subsidy funds will not be the property of the development until they have been disbursed. A development's

capitalized operating subsidy reserve will be evaluated periodically following occupancy and recaptured as appropriate for other MHSA Housing Program developments.

For a "mixed population" development, the borrower must submit a bifurcated annual budget that distinguishes the MHSA Housing Program units receiving capitalized operating subsidies from those units that do not receive the subsidy, and shows associated costs. Attachment A, Application Supplement for Developments Applying for Capitalized Operating Subsidy Funds, includes the required budget forms. For all developments requesting capitalized operating subsidies, this application supplement must be submitted in accordance with either Section 4.2.3, Section B: MHSA Housing Program Supplemental Application (Rental Housing Development), or Section 4.2.4, Section C: MHSA Housing Program Supplemental Application (Shared Housing Development).

To request a MHSA Housing Program capitalized operating subsidy for a specific development, the applicant must complete and submit Attachment A, Application Supplement for Developments Applying for Capitalized Operating Subsidy Funds under Item B.10 of its application, in accordance with Section 4.2.2 of this application package. CalHFA will calculate the capitalized operating subsidy for each development using Attachment B, Financial Spreadsheet for Calculating Capitalized Operating Subsidy. The capitalized operating subsidy will be determined based on need, but will be no more than \$100,000 per subsidized unit.

2.9 Supportive Services Plan

Applicants for MHSA Housing Program funds must provide a clearly articulated supportive services plan and service delivery program. The services to be provided must be appropriate to the MHSA Housing Program target population and must be designed to support in housing stability as well as wellness, recovery and resiliency.

Each application must include a supportive services plan that meets MHSA Housing Program requirements and is approved by DMH. The plan must describe each service to be provided and the service delivery system that will be in place. Further, CalHFA requires that the borrower have a commitment for service funding from the County Mental Health Department for the full term of the MHSA Housing Program loan, before any funds are disbursed. The supportive services plan must include the information specified in Section 4.2.5, Item D.4, of this application package.

Nothing in the section restricts supportive services funding to only MHSA sources. Supportive services may be funded by Medi-Cal, other federal funding and/or private sources.

2.10 Property Management Plan

Applicants for MHSA Housing Program funds must also provide a clearly articulated property management plan that includes the name and qualifications of the property management agent, its experience in serving the MHSA Housing Program target population, and its plan for managing building and other anticipated costs. The property management plan must include the information specified in Section 4.2.5, Item D.13, of this application package.

2.11 Asset Management

Replacement reserves and regular operating expense reserves for both Rental Housing Developments and Shared Housing Developments will be held by CalHFA, unless the Agency determines otherwise. CalHFA will also hold capitalized operating subsidies in a reserve. CalHFA typically will not hold reserves where there is a fully amortizing first mortgage, or where CalHFA is not holding the capitalized operating reserve.

Borrowers will be required to submit quarterly financial reports to CalHFA. However, this requirement may be waived or more frequent reporting may be required at CalHFA's discretion. Borrowers will also be required to submit annual audits prepared by a certified public accountant in accordance with commonly accepted accounting standards. This annual audit requirement may be waived at CalHFA's discretion or, alternatively, CalHFA may, at its discretion, substitute a different form of financial certification for Shared Housing Developments and very small Rental Housing Developments of 25 apartments or fewer.

2.12 Development Oversight

CalHFA will be responsible for ongoing oversight of the "housing aspects" of MHSA Housing Program developments during the 20-year loan term. DMH and the county mental health departments will be responsible for ensuring appropriate oversight and monitoring to ensure that the target population is being served and that the approved supportive services are being provided. Borrowers must complete and submit the MHSA Housing Program Annual Self-Certification form to both DMH and CalHFA on an annual basis. In applying for MHSA Housing Program funding, the applicant is agreeing to adhere to all oversight requirements mandated by CalHFA, DMH and the sponsoring county mental health department. This requirement will be included in the Regulatory Agreement. The MHSA Housing Program Annual Self-Certification form is available on the CalHFA website at www.calhfa.ca.gov.

2.13 Outcomes Reporting

Outcomes reporting will be required for all MHSA Housing Program tenants. For Full Service Partnership (FSP) tenants, reporting requirements will be consistent with those established by DMH for individuals enrolled in the CSS category of FSP. For tenants not enrolled in a FSP, outcomes reporting requirements will be provided at a later date, but prior to loan closing. Specific information regarding housing outcomes will be required for all tenants, as specified in the Regulatory Agreement. This outcome information must be provided on the MHSA Housing Program Annual Self-Certification form (see CalHFA website). Developments will also be required to provide data on tenant access to housing subsidies and benefits, including but not limited to the number of tenants who:

- Are on the Section 8 waiting list,
- Are enrolled in the Section 8 voucher program,
- Are receiving SSI/SSP, and
- Have an application in progress for, but are not yet receiving, SSI/SSP.

All outcomes requirements will be included in the Regulatory Agreement (see Section 2.14). In applying for MHSA Housing Program funding, the county applicant must agree to comply with all outcomes reporting requirements mandated by DMH by submitting the form required in Section 4.2.5, Item D.8.

Please note that the definition of the term Full Service Partnership (FSP) can be found in Title 9, California Code of Regulations (CCR), Section 3200.130. The Full Service Partnership Category is defined in CCR Section 3200.140. Program requirements for the FSP Category are set forth in CCR Sections 3620, 3620.5 and 3620.10.

2.14 Regulatory Agreement and Term Sheet

A Regulatory Agreement will be placed on the development for the term of the loan. A copy of the MHSA Housing Program Annual Self-Certification will be appended to the Regulatory Agreement. Attachment C, MHSA Housing Program Term Sheet, describes the loan requirements in detail.

2.15 Predevelopment Loans

A predevelopment loan may be available, at CalHFA's discretion, to any development that has received a loan commitment for MHSA Housing Program capital funds, has obtained other funding commitments, and can demonstrate site control and evidence of appropriate zoning. The intent of this predevelopment loan program is to provide the funds necessary to enable the developer to complete the due diligence required to close all development loans. The loan limit for Rental Housing Developments is \$500,000, while the loan limit for Shared Housing Developments is \$200,000. The developer may request a predevelopment loan by checking the appropriate box on the Universal Application, which must be submitted as Section A of the MHSA Housing Program application requesting capital funds.

2.16 Small Counties

The application process will be the same for large and small counties. However, CalHFA may waive some of the program requirements for small county applications. Requests for waivers will be reviewed on a case-by-case basis. MHSA Housing Program funds may be combined by small counties to create developments that serve regional needs. While it is anticipated that the MHSA Housing Program is sufficiently flexible to meet the needs of small counties, alternate program provisions may be developed if they are needed to address the unique needs of small counties.

3.0 Other Considerations

This section outlines critical issues that should be considered by county mental health departments and borrowers when planning developments for which they intend to submit MHSA Housing Program funding applications.

3.1 Licensing Considerations

Applicants must comply with applicable laws relating to facility licensure and related zoning requirements. The MHSA Housing Program makes funding available only for developments that will offer independent housing with supportive services. Funds are not available for developments that require licensure of any kind. In order for a developer to determine whether a proposed development is subject to Community Care Licensing requirements, it is usually necessary to examine all of the following:

- The needs of the tenants who reside in the development
- The development's ownership and building type

- The services provided in conjunction with the housing, and
- The relationships among the property owner, property management agent, service provider(s) and tenants.

For guidance in this area, see the *Supportive Housing Licensing Guidelines, May 2005*, developed jointly by DMH and the Corporation for Supportive Housing (CSH) and available on the DMH website at <http://www.dmh.ca.gov/mhsa/Housing.asp>. Applicants are advised to seek legal advice on this issue.

3.2 Fair Housing Considerations

Applicants must comply with both fair housing laws and MHSA Housing Program target population requirements. Applicants are advised to seek legal advice on this issue.

3.3 SSI Considerations

Applicants should be aware that the manner in which they organize their project (development) may impact the Supplemental Security Income (SSI) eligibility of their tenants. For instance, in-kind food, clothing or shelter may be counted as income to the individual, depending upon the circumstances of the particular development. Applicants are advised to seek legal advice on this issue.

3.4 Article 34

Applicants should be aware that their developments may be subject to Article 34 of the State Constitution, depending upon the particular circumstances of the development. Applicants are advised to seek legal advice on this issue.

3.5 Prevailing Wage

Use of MHSA Housing Program funds may trigger State prevailing wage requirements. Applicants are advised to seek legal advice on this issue.

3.6 Accessibility Considerations

Developments must meet Americans with Disabilities Act (ADA) and fair housing accessibility requirements. Developments that utilize federal funding may be required to meet Section 504 requirements. Applicants are advised to seek legal and architectural advice on this issue.

4.0 Submission Requirements

Applications will be accepted over the counter, with no deadlines for submission, and will be awarded funding once DMH and CalHFA have determined that:

- All requirements are met,
- The MHSA Performance Contract (or other successor document, as prescribed by DMH) and the contract amendment for the MHSA Housing Program have been signed by the county, and
- There is still available funding within the allocation provided to the county in which the proposed development is located.

To be considered for funding, applications must be submitted in accordance with Section 4.0 in its entirety, and on forms provided in the attachments to this application package. Applications must meet all requirements specified in this application package.

4.1 Rules of the Application Process

Applicants must adhere to the following requirements when submitting an application for MHSA Housing Program capital and/or operating subsidy funds:

- a. Only one application may be submitted per development. Each application must meet all requirements set forth in this application package.
- b. Two master sets of the application must be submitted—one to DMH and one to CalHFA—at the following addresses:

California Department of Mental Health
Special Projects
Attention: Jane Laciste, Chief, Special Projects
1600 9th Street, Room 250
Sacramento, CA 95814

California Housing Finance Agency
Multifamily Programs
Attention: Edwin Gipson, Chief of Multifamily Programs
100 Corporate Pointe, Suite 250
Culver City, CA 90230

- c. Each master set must be submitted in a three-ring binder.
- d. The boxes in which each master set is submitted must be labeled as follows: "MHSA Housing Program Application." Each box must also show the name and address of the applicant organization.
- e. Certain forms in the application require signatures. Both master sets shall contain original signatures.
- f. The application must be organized as specified in Subsection 4.2 below. The binder must be divided into four sections—a Project Overview and three lettered sections (Sections A, B or C, and D). Each section must be represented by a corresponding tab (Project Overview or lettered), as specified in 4.2. Application Response Guidelines, and in Attachment D, MHSA Housing Program Application Index and Checklist. Within each section of the binder, tabbed dividers must be labeled and inserted in the order specified in Attachment D. All responses, forms and required documents must be placed behind their corresponding tabs.
- g. For items that are not applicable to the application, a sheet must be placed behind the corresponding tab, stating "Not Applicable."

DMH and CalHFA will conduct Application Workshops throughout the State to assist prospective applicants in understanding the application requirements. The workshops will be held at a time and place to be announced on the DMH and CalHFA websites at www.dmh.ca.gov and at www.calhfa.ca.gov. Prospective applicants will have an opportunity to ask questions of DMH and CalHFA regarding this application package. In addition, applicants may submit questions in writing via email, fax or letter to DMH at jane.laciste@dmh.ca.gov, or to CalHFA at egipson@calhfa.ca.gov.

Information provided in submitted applications will become a public record available for review by the public pursuant to the Public Records Act. As such, any materials provided will be disclosed to any person making a public records request. Therefore, applicants should use discretion in providing information that is not specifically requested, including but not limited to, bank account numbers, personal phone numbers and home addresses. By providing this information, the applicant is waiving any claim of confidentiality and consents to the disclosure of all submitted material upon request.

All parties should be aware that county mental health departments are required to follow the provisions of Welfare and Institutions Code (W&I) Sections 5847 and 5848 and relevant regulations in the preparation and submission of any proposals or applications for new MHSA-funded developments and programs. This includes posting Section 4.2.1, Project Overview, and Section 4.2.5, Section D: MHSA Housing Program Supportive Housing and Services Information, Items D.1 through D.5, of this application for review and comment by stakeholders for at least 30 days, pursuant to the requirements of W&I 5848. The county is also required to submit a summary and analysis of any substantive recommendations and revisions made as a result of stakeholder input, in accordance with Item D.16. MHSA Housing Program applications are updates to the county's CSS component of its Three-Year Program and Expenditure Plan and, as such, a public hearing is not required. **NOTE: The 30-day stakeholder process must be completed prior to submission of the MHSA Housing Program application.**

4.2 Application Response Guidelines

Applications submitted in response to the requirements of this section must be presented in the order specified in Attachment D, MHSA Housing Program Application Index and Checklist, which will also serve as the Table of Contents for the application. This completed Index and Checklist must be placed in front of the Project Overview.

4.2.1 Project Overview

The Project Overview consists of two parts—A Development Summary Form (see Attachment I, Development Summary Form) and a narrative Development Description. The Development Summary Form contained in Attachment I must be completed and placed at the front of the Project Overview. The Development Description, which is limited to two (2) pages in length, must follow the Development Summary Form.

The narrative Development Description must provide a thorough discussion of the development, including, at a minimum, the housing and service goals of the development, characteristics of tenants to be served, the type of housing that will be provided, how the building(s) in which housing and services will be provided (location, building type, layout, features, etc.) will meet the housing and service needs of the tenants, the primary service provider and other development partners, and development financing.

Within the Project Overview tab, these two items must be placed behind a separate divider, the first labeled "Development Summary Form," and the second labeled "Development Description."

4.2.2 Section A: Universal Application

Section A must be tabbed and entitled "Universal Application." All items must be submitted in accordance with the instructions in the Universal Application. Within Section A, each required item must be placed behind a divider that has been labeled to match the item number on Attachment D, MHSA Housing Program Application Index and Checklist. For Rental Housing Developments, Items UA.1 through UA.14 must be submitted. For Shared Housing Developments, Items UA.1 through UA.12 must be submitted.

Please complete only those aspects of each required item that appear to apply to your development. CalHFA will provide technical assistance on completion of the Universal Application upon request. If the information required on the Universal Application is not complete at the time of submission, CalHFA will contact the applicant to request additional information or to provide assistance, if necessary.

Applicants are responsible for submitting the most recent version of the Universal Application, which may be obtained from the CalHFA, TCAC, the California Debt Limit Allocation Committee (CDLAC) or HCD websites. CalHFA's website is www.calhfa.ca.gov.

4.2.3 Section B: MHSA Housing Program Supplemental Application (Rental Housing Development)

Section B must be completed for all Rental Housing Development applications. Shared Housing Development applications should not include a Section B.

Section B must be tabbed and entitled "MHSA Housing Program Supplemental Application (Rental Housing Development)." All items listed in Section B of Attachment D, MHSA Housing Program Application Index and Checklist, must be submitted if available and/or applicable. Within Section B, each required item must be placed behind a divider that has been labeled to match the item number on the MHSA Housing Program Application Index and Checklist.

4.2.4 Section C: MHSA Housing Program Supplemental Application (Shared Housing Development)

Section C must be completed for all Shared Housing Development applications. Rental Housing Development applications should not include a Section C.

Section C must be tabbed and entitled "MHSA Housing Program Supplemental Application (Shared Housing Development)." All items listed in Section C of Attachment D, MHSA Housing Program Application Index and Checklist, must be submitted if available and/or applicable. Within Section C, each required item must be placed behind a divider that has been labeled to match the item number on the MHSA Housing Program Application Index and Checklist.

4.2.5 Section D: MHSA Housing Program Supportive Housing and Services Information

Section D must be tabbed and entitled "MHSA Housing Program Supportive Housing and Services Information." All items listed in Section D of Attachment D, MHSA Housing Program Application Index and Checklist, must be submitted if applicable. Within Section D, each required item must be placed behind a divider that has been labeled to match the item number on the MHSA Housing Program Application Index and Checklist. The following paragraphs provide specific information on the information to be included in each of the items that must be submitted in Section D of the MHSA Housing Program application. Applicants are cautioned that the proposed supportive services information presented in Section D, Items D.1 through D.5, is subject to a 30-day stakeholder review process. DMH will not accept the MHSA Housing Program application until the stakeholder review process is complete. (See Section 4.1, final paragraph, for information on posting requirements.)

D.1 Consistency with Three-Year Program and Expenditure Plan

In Item D.1 of your response, describe how the proposed supportive housing development is consistent with the sponsoring county mental health department's CSS planning process and approved Three-Year Program and Expenditure Plan. Provide specific information regarding how the development meets priorities and goals that were identified in the Plan.

D.2 Description of Target Population to be Served

In Item D.2 of your response, describe the target population you will serve in your MHSA Housing Program supportive housing development, including the special needs and income level of the population.

D.3 Tenant Selection Plan

Item D.3 of your application must present a detailed Tenant Selection Plan that is specific to the development for which funds are being requested and is jointly developed by the development partners, including the county mental health department, the primary service provider, the property manager, and the borrower. The plan must be in narrative form and must describe:

- How prospective tenants will be referred to and selected for your MHSA Housing Program housing development, including the tenancy application process, wait list procedure, and process for screening and evaluating tenants for participation;
- The criteria that will be used to determine a tenant's eligibility for participation in your development;
- How those criteria are consistent with both the county CSS Plan and MHSA Housing Program target populations;
- Your reasonable accommodation policies and protocols as they relate to targeting and tenant screening;
- How fair housing and MHSA Housing Program target population requirements will be met; and
- Your appeals process for individuals who are denied tenancy in your development.

Following the narrative Tenant Selection Plan, include a copy of the county mental health department's Tenant Referral and Certification Process that applies to your development. This county-developed Tenant Referral and Certification Process must, at a minimum:

- Describe how an individual applies to the county to become certified as eligible for the MHSA Housing Program;

- Describe the process utilized by the county mental health department to determine whether the individual meets its requirements for certification as an MHSA Housing Program tenant;
- Describe how a wait list of potential tenants who have been certified as eligible for the MHSA Housing Program will be established and maintained;
- Describe how the county mental health department will refer tenants certified as eligible to the development; this description should discuss the county's referral process during the rent-up period and on an ongoing basis; and
- If the county mental health department designates specific non-county agencies, such as MHSA-qualified service providers, to certify an individual's eligibility for tenancy in a MHSA Housing Program development, identify the agency(ies) and describe how they will conduct the required activities.

Attachment E, Additional Guidance for Counties on Tenant Referral and Certification, provides additional information to county mental health departments on developing a process for identifying, certifying and referring appropriate tenants to MHSA Housing Program developments.

D.4 Supportive Services Plan

In Item D.4 of your response, provide a narrative that describes your approach to providing supportive services to the MHSA Housing Program target population. This narrative must include:

- A description of services to be delivered, including where and how they will be delivered, the frequency with which they will be made available to tenants, the primary service provider (see Item D. 11 below), and other community linkages. The narrative must also demonstrate an understanding of MHSA Housing Program target population needs/issues in permanent supportive housing (both Full Service Partnership and non-Full Service Partnership) and must describe the process for assessing their supportive services needs. (See Title 9, CCR, Section 3200.130, for the definition of the term Full Service Partnership (FSP).)
- Plan for helping tenants maintain their housing and achieve independence, including employment services, budgeting and financial training, educational opportunities, assistance in obtaining or maintaining benefits to which they are, or may be, entitled, and other community services that will be made available to tenants.
- A description of how services will support housing stability, as well as wellness, recovery and resiliency. It is anticipated that the supportive services plan for the development will include services that are facilitated by peers and/or consumers. If this is not part of your service delivery approach, please provide an explanation.
- Strategies for engaging tenants in supportive services and in community life. This narrative should describe the anticipated frequency of contact between supportive services staff and MHSA Housing Program tenants. A tenant's participation in MHSA services may not be a condition of occupancy in MHSA Housing Program-funded permanent supportive housing units. Note: Certain federal housing subsidy programs may impose service participation or other requirements as a condition of receiving the subsidy funds. MHSA Housing Program funds may be provided to such developments. However, regardless of the subsidy source, your response should include engagement strategies that provide opportunities for tenant choice.
- Describe the plan for communication between the service provider and property management regarding the status of tenants in the development and any building and/or community issues that need attention. This plan should include regularly scheduled meetings among the development partners, a description of service coordination for the development if there is more than one service provider, and

identification of a single point of contact for communicating and coordinating supportive services.

D.5 Supportive Services Chart

Attachment F, Supportive Services Chart, of this application package contains a Supportive Services Chart. This Supportive Services Chart must list all services that will be provided to tenants of the MHSA Housing Program units, including any in-kind services essential to the success of the Supportive Services Plan.

Please complete this chart and include it as Item D.5 in your response.

D.6 Design Considerations for Meeting the Needs of the MHSA Housing Program Target Population

In Item D.6 of your response, describe:

- The physical space in which supportive services will be delivered to the MHSA Housing Program target population, including a description of how this space will be designed to meet the needs of this population,
- How the residential units will be designed to meet the needs of this population, and
- If applicable, how the residential units will be designed to provide appropriate accommodations for physically handicapped members of the MHSA Housing Program target population.

D.7 Plan for Collecting and Submitting Outcome Data

In Item D.7 of your response, describe the county's plan for collecting and submitting required outcome data in accordance with DMH requirements. Identify staff responsible for collecting and submitting the required outcome data, and provide contact information. (Item D.7 must be submitted as soon as DMH requirements on collecting and submitting outcome data are released to counties.)

D.8 Agreement to Meet DMH Outcome Reporting Requirements

Attachment G of this application package includes an Agreement to Meet DMH Outcome Reporting Requirements form confirming that the applicant and all development partners agree to comply with all DMH outcome reporting requirements. In Item D.8, include a completed and signed copy of this form. (Item D.8 must be submitted as soon as DMH requirements on outcome reporting requirements are released to counties.)

D.9 County Mental Health Department Sponsorship and Services Verification Form

Attachment H of this application package includes a County Mental Health Department Sponsorship and Services Verification Form demonstrating the county mental health department's intent to participate as a development partner and fund supportive services for the MHSA Housing Program tenants for the duration of the loan term. In Item D.9, include a completed and signed copy of this form.

D.10 Applicant and Partner Experience Serving Target Population

The applicant organization and each of its primary development partners (other than service providers—see D.11) must demonstrate that they have experience in successfully providing supportive housing to tenants with serious mental illness. In Item

D.10 of your response, describe the background and experience of the applicant and each of its primary development partners, including but not limited to the:

- Developer and/or borrower,
- Property management agent,
- Local housing agency, and
- Any other collaborative partners.

For each of these partners, identify and describe all developments in which the partner has been involved that serve tenants with serious mental illness. For each development, include the name of the development; the number of units targeted to tenants with serious mental illness; the period during which the borrower will be/was involved in the development; the job title or position, roles and responsibilities of the borrower in the development; and the primary service provider for the development. Describe the history of the applicant organization's relationship with the development partners on developments that serve tenants with serious mental illness.

D.11 Primary Service Provider Experience Serving Target Population

The primary service provider must demonstrate that it has experience in successfully delivering services to tenants with serious mental illness. In Item D.11 of your response, identify and describe all developments in which the primary service provider has provided services to tenants with serious mental illness. Specify experience in providing supportive services designed to assist tenants with serious mental illness to retain their housing in housing developments. For each development, include the name of the development; the number of units targeted to tenants with serious mental illness; the services provided; the period during which the primary service provider delivered services to development tenants; and the number of unduplicated tenants served annually.

If the county mental health department has not designated a primary service provider at the time of application, the county will be considered the primary service provider for purposes of responding to this item. If the county submits information under this item as the primary service provider, final identification of a primary service provider, with an updated Item D.11 submission reflecting that provider's experience and qualifications, will be a condition of loan closing.

D.12 Memorandum of Understanding with Key Partners

In Item D.12 of your response, include a copy of your written Memorandum of Understanding (MOU) between the borrower, the primary service provider, the property management agent and the county, documenting the roles and responsibilities of each partner, each partner's willingness to enter into a contract to carry out those roles and responsibilities (including provision of supportive services and property management services), and procedures for ongoing communication and decision-making between the property management agent and the primary service provider to assist tenants in maintaining housing stability. If the MOU has not been completed at the time of application or at some point during the underwriting process, it must be submitted as a condition of loan closing.

D.13 Property Management Plan

In Item D.13 of your response, describe the Property Management Plan for the development. Describe the roles and responsibilities of the property management agent, including services to be provided. Include a description of how the development's property management rules address the issues and needs of the MHSA Housing Program target population. Describe procedures for ongoing communication between the property management and supportive services staff to assist tenants in maintaining housing stability. Describe how you will staff the property management function, including the location of staff providing property management services. Provide the management fee structure showing the amount the development will be charged for property management services.

D.14 Property Management Contract

In Item D.14 of your response, include a copy of the management contract or a letter of interest from the proposed property management agent indicating a willingness to enter into a contract to provide property management services to the development.

D.15 Physical Inspection Plans for Shared Housing Developments

CalHFA will not conduct physical inspections of Shared Housing Developments. However, third-party annual physical inspections are required. In Item D.15 of your response, describe who will conduct third-party annual housing quality control physical inspections of the Shared Housing Development. Describe your methodology for conducting inspections. Describe how, when, and in what format the physical inspection results will be transmitted to CalHFA.

D.16 Summary and Analysis of Stakeholder Input

In Item D.16 of your response, submit documentation of the local review/stakeholder process, including:

- A description of the methods used to circulate the Project Overview and Items D.1 through D.5 for the purpose of public comment,
- Proof of posting of the Project Overview and Items D.1 through D.5,
- A summary and analysis of any substantive recommendations, and
- A description of any substantive changes made.

5.0 Loan Underwriting Process

This section provides information regarding the loan processing requirements under the MHSA Housing Program. Specific loan terms and conditions are separately delineated in Attachment C, MHSA Housing Program Term Sheet.

5.1 Loan Process

The major stages of the loan process are:

- Application for loan (and predevelopment loan and capitalized operating subsidies, if appropriate) and review of submitted materials
- Concept Meeting
- Evaluation of submitted materials
- Final Commitment
- Predevelopment Loan Close, if applicable

- Construction/Permanent MSHA Housing Program Loan Close
- Completion of Construction/Execution of Capitalized Operating Subsidy Contract, if applicable

Prior to submitting an application, development sponsors and developers are encouraged to discuss their developments with CalHFA staff, and to familiarize themselves with the MSHA Housing Program processing requirements.

5.2 Application and Review of Submitted Materials

The application package (including the Universal Application and the applicable MSHA Housing Program Supplemental Application submissions) provides CalHFA with the information it needs to underwrite the loan and determine whether the development complies with program requirements.

The underwriting process for MSHA Housing Program loan applications will begin with CalHFA's receipt of one complete application master set, as required in Section 4.1, Rules of the Application Process, Item b. Once CalHFA receives the application, it will be reviewed for completeness. The developer and/or county that submitted the application will be contacted and a Concept Meeting will be scheduled.

5.3 Concept Meeting

The purpose of the Concept Meeting is to bring the key processing staff of the Agency/DMH and the developer together to review the scope of the development, discuss processing requirements, identify and address specific issues, determine the feasibility of the development, and establish the timeline for the loan. For an acquisition/rehabilitation project, a Physical Needs Assessment (PNA) is required and will be discussed during the Concept Meeting.

CalHFA recommends that the borrower include the following representatives in the Concept Meeting:

- Borrower's principals
- Consultants
- Property management agent
- Primary service provider
- County mental health department representative

At the Concept Meeting, the borrower is expected to discuss the proposed development, including at a minimum:

- Borrower's loan request
- Market conditions (if applicable)
- Sources and uses of funds, including construction loan, amortizing debt (if applicable), residual and deferred debt, grants, and tax credits (if applicable)
- Order of debt priority (if applicable)
- Development team
- Plans and specifications
- Environmental and other issues

- Capitalized operating subsidy (if applicable), and other sources of rental or operating subsidy for which the borrower has applied
- Target population
- Supportive services plan
- Predevelopment funding

The plans and specifications will be reviewed by CalHFA with the development architect and the developer. This review may, at CalHFA's discretion, occur either at the Concept Meeting or at a separate meeting between CalHFA, the architect and the general contractor closer to loan closing.

CalHFA staff will review the requirements for loan processing (including required studies specified in Section 5.4), discuss the feasibility of the development, and discuss any other issues identified during their review of the application package.

DMH staff will review the requirements for approval of the supportive service components and will discuss any issues identified during their review of the application package.

Following the Concept Meeting, the Loan Officer will prepare a summary of the outstanding issues, including actions necessary to resolve identified issues, the responsible party for resolving each issue, and the timeframe for resolution. The Concept Meeting summary will be distributed to all appropriate parties.

5.4 Evaluation of Submitted Materials

During the evaluation of submitted materials, all application information, CalHFA-required studies, and other information the Loan Officer may request from the applicant, CalHFA will determine the feasibility of the development. CalHFA will complete its evaluation no later than 60 days after it receives a completed application and any additional requested information.

Included in the CalHFA's loan processing requirements are a number of studies and other submissions (at the borrower's expense), which must be submitted during the underwriting process and may include but are not limited to:

- Market Study;
- Appraisal;
- Phase 1 Environmental Toxic Report, to identify environmental concerns;
- Preliminary design drawings and specifications, which must include all off-site improvements required in connection with the proposed development, and service space for the supportive services program, as appropriate;
- Site Survey (ALTA Survey), which must show all site details; and/or
- Topographical map, if the slope exceeds five percent (5%).

CalHFA, may at its discretion and when appropriate, allow the developer to submit the market study, the appraisal, ALTA survey, and topographical map at a later date, but CalHFA will require these items to be submitted as a special condition at loan closing/funding.

In addition to these studies, acquisition/rehabilitation loans also require the following submissions during the underwriting process (prior to loan closing):

- Physical Needs Assessment or building inspection report, as appropriate. In either case, the assessment/inspection must also estimate the remaining useful life of systems and appliances and will be incorporated in the Agency's determination of replacement reserves;
- Lead Paint, Asbestos and Mold studies, as appropriate;
- Sewer Camera Report;
- Termite and Dry Rot Report;
- Narrative scope of work; and
- Plans and Specifications, following agreement on the scope of work between CalHFA and the borrower, including a detailed cost breakdown.

The rehabilitation plans and specifications and the detailed cost breakdown may be deferred by CalHFA as conditions of funding, where appropriate.

CalHFA will review preliminary design drawings and Plans and Specifications against the MHSA housing program design criteria contained in either the California Housing Finance Agency Architectural Guidelines (for Rental Housing Developments) or the CalHFA Guidelines for Shared Housing Developments, as applicable. Both of these documents may be found on CalHFA's website at www.calhfa.ca.gov.

Earthquake insurance is not required for MHSA Housing Program loans.

5.5 Final Commitment

When the required underwriting information is complete, including approval of the design and the supportive services plan and budget (by DMH), a Final Commitment request will be prepared by Multifamily Programs staff, including a revised cash flow spreadsheet (if necessary) and all supporting documentation that outlines the costs of the development, the actual terms and conditions of the financing, and related financing fees.

The Final Commitment package will then be presented for review and approval. The approval authority may approve a loan request, deny a loan request and/or impose additional conditions of approval. A supportive services budget for on-site supportive services will be a condition of approval for Rental Housing Developments. If the development has changed substantially since the application was originally submitted by the county mental health department, county consent may be solicited.

Following loan approval, a commitment package will be sent to the sponsor/borrower for signature. The package will include a commitment letter, sample note, deed of trust, capitalized operating subsidy contract and Regulatory Agreement.

5.6 Predevelopment Loan Close

The predevelopment loan closing, if applicable, will take place following final commitment of the MHSA Housing Program permanent loan. At CalHFA's discretion, the permanent and predevelopment loans may be combined, with predevelopment funds being released first. Predevelopment loans over \$200,000 must be secured. Payment of

a one percent (1%) MHSa Housing Program loan origination fee is due at predevelopment loan closing, if there is a predevelopment loan.

5.7 MHSa Housing Program Construction/Permanent Loan Closing

The MHSa Housing Program loan will typically close simultaneously with the construction loan for the development. Payment of a one percent (1%) MHSa Housing Program loan origination fee is due at the MHSa Housing Program loan closing, if there was no predevelopment loan.

A Construction/Permanent Loan Closing checklist will be given to the borrower, who must complete the checklist and provide three copies to CalHFA. CalHFA's Legal Division will then draft final loan documents and escrow instructions, and will forward them to the borrower, the borrower's attorney and the title company for review.

5.8 Construction/Rehabilitation

New Construction or Acquisition/Rehabilitation start will not be authorized until CalHFA has received and approved the construction contract documents and the 90 percent or "to be permitted" Plans and Specifications, in the case of new construction projects, or Plans and Specifications in the case of acquisition/rehabilitation projects.

The construction phase of the project will be monitored by either CalHFA staff or third-party inspectors. The inspectors will evaluate the work according to the plans and specifications or the scope of work previously approved by CalHFA.

5.9 Development Completion/Conversion to Permanent Loan and Execution/Funding of Capitalized Operating Subsidy Contract

CalHFA will convert the MHSa Housing Program loan to a permanent loan and, if applicable, execute the capitalized operating subsidy contract at development completion and funding of the permanent loans.

Documentation at Development Completion: CalHFA requires the following documentation before the close of escrow as proof that the development is complete:

- Certificate of Occupancy;
- Signed ALTA Survey;
- Audited Cost Certifications;
- Rent roll and updated operating budget and
- CalHFA review and approval of the final "as-built" drawings.

Fees and Impounds: CalHFA may, at its discretion, require payment of the following fees and impounds prior to permanent loan closing, from escrow proceeds:

- Tax service fee
- One year prepaid hazard and liability insurance, or adequate impounds collected in escrow to cover the first year's premiums

- Impounds for property taxes, including estimated supplemental taxes; insurance, special assessments; and interest through the end of the month in which the loan closes
- UCC search and UCC filing fees
- Impounds for the reserve replacement account
- Rent-Up, Marketing and Operating Expense reserves
- MHSA Housing Program capitalized operating reserve
- Replacement reserve deposit
- Capitalized operating reserve

CalHFA typically will not collect annual reserves or impounds for taxes and insurance when there is a first fully amortizing loan, or when CalHFA is not administering a capitalized operating subsidy for the development.

Capitalized Operating Subsidy Contract: CalHFA will execute the capitalized operating subsidy contract with the borrower upon satisfaction of all conditions in Final Commitment letter/loan agreement relating to the capitalized operating subsidy reserve, including the following:

- Certification or other evidence acceptable to CalHFA that the sponsor/developer applied for and did not receive rental or operating subsidies from another source,
- Borrower's Marketing Plan for the MHSA Housing Program development,
- Rent-Up Plan for the MHSA Housing Program development,
- Supportive services budget,
- Certificate of Occupancy,
- Memorandum of Understanding with Key Partners (Item D.12), and
- Final identification of primary service provider, with updated Item D.11.

6.0 DMH Application Approval Process

DMH is responsible for evaluating specific sections of the MHSA Housing Program application. DMH will review all information submitted in response to the requirements of Section 4.2.5, Section D: MHSA Housing Program Supportive Housing and Services Information. DMH will also review the applicant's response to Section 4.2.1, Project Overview, which will give reviewers a comprehensive understanding of the proposed development, including how the Supportive Services Plan and related documentation will be integrated into the overall development.

The DMH application review process is expected to take approximately 30 days from submission of a complete application. The process begins with submission of a completed MHSA Housing Program application. As applications are submitted, DMH will assemble a review team and distribute the relevant application and review materials. The DMH review team will include the following members: DMH housing staff, county operations staff from the applicant county, a consumer, a family member of a mental health consumer, and consultant staff with supportive housing expertise. The Oversight and Accountability Commission (OAC) will receive a copy of the review materials; commission members are invited to submit comments to DMH regarding the development proposal.

Within 14 days of application distribution, a review team conference call will be conducted, during which reviewers will discuss their evaluations and make

recommendations. DMH will then send CalHFA an evaluation summary with a recommendation of "approved," or "pending" if additional information is needed. Following the evaluation by both agencies, a Concept Meeting will be scheduled by CalHFA to discuss the application (see Section 5.3, Concept Meeting).

The DMH application evaluation will be based on the following criteria:

1. The proposed development's consistency with the priorities identified in the approved Three-Year CSS Program and Expenditure Plan;
2. A clearly articulated understanding of the supportive service needs of the individuals to be served in the housing development; this should be reflected in the type and frequency of services provided as well as an appropriate staffing ratio. Through a combined review of the services plan narrative and supportive services chart, it should be clear what services are provided, where they are provided, who is providing the services, how frequently, and how the services meet the needs of the individuals who are being housed;
3. Inclusion of consumer- or family-facilitated services and supports, which may include peer support, peer-facilitated groups/activities, tenant community organizations/groups, etc.;
4. The description of tenant engagement strategies;
5. Commitment, plan, and staff responsible for complying with outcomes reporting requirements for both FSP and non-FSP tenants;
6. A residential unit design that is suitable for the MHSA Housing Program tenants;
7. Adequate supportive services space for delivery of services to the tenants, and/or a description of how/where services will be delivered in developments that are not likely to have designated space (e.g. shared housing);
8. Signed and completed attachments submitted in Tabs D.8 and D.9;
9. Applicant and development partners (to include developer, property management agent, local housing agency, and any other collaborative partner): Documented experience in providing supportive housing to tenants with serious mental illness;
10. Primary Service Provider: Documented experience in successfully providing services to tenants with serious mental illness in supportive housing;
11. A completed Memorandum of Understanding (MOU) among development partners that outlines roles, responsibilities, plan for on-going communication, decision-making, and governance;
12. Completed Property Management Plan and submission of a copy of the Property Management Contract; and
13. For Shared Housing Developments only, a description of the procedure for annual housing quality control physical inspections.

7.0 Attachments

Attachment A: Application Supplement for Developments Applying for Capitalized Operating Subsidy Funds

- Attachment B: Financial Spreadsheet for Calculating Operating Subsidy
- Attachment C: MHSA Housing Program Term Sheet
- Attachment D: MHSA Housing Program Application Index and Checklist
- Attachment E: Additional Guidance for Counties on Tenant Referral and Certification
- Attachment F: Supportive Services Chart
- Attachment G: Agreement to Meet DMH Outcome Reporting Requirements
- Attachment H: County Mental Health Department Sponsorship and Services Verification Form
- Attachment I: Development Summary Form
- Attachment J: County Planning Estimates

***Attachment A: Application Supplement for Developments
Applying for Capitalized Operating Subsidy Funds***

Insert completed supplement in Tab B.10 of your application, for Rental Housing Developments, or in Tab C.10, for Shared Housing Developments.

**Application Supplement for Developments Applying for
Capitalized Operating Subsidy Funds**

Development Information

County Mental Health Department: _____
 Name of Development: _____
 Site Address: _____
 City: _____ State: _____ Zip: _____
 Development Developer _____

- New Construction
- Acquisition/Renovation of an existing structure
- Acquisition only of an existing structure

Type of development: Rental Housing Shared Housing

Type of building: Apartment Building Single Family Home
 Condominium Other

Total number of units in development _____
 Total number of units with capital funding from MHSA Housing Program _____
 Total number of MHSA units for which subsidies were applied for from other sources _____
 Total number of MHSA units with subsidies from other sources _____
 Total number of non-MHSA units with subsidies from other sources _____
 Total number of subsidized units (MHSA units and other) _____

Capitalized Operating Subsidy Request

Number of units for which MHSA Capitalized Operating Subsidy is requested _____

*Approximate dollar amount of MHSA Capitalized Operating Subsidy requested per unit _____ (maximum \$100,000 per unit)

Type of Unit	Number of Units	Tenant Portion of Rent
Bedroom		
Studio		
1 bedroom		
2 bedroom		
3 bedroom		
4 bedroom		

* For information purposes only. The amount of the Capitalized Operating Subsidy will be determined by CalHFA.

Other Rental Subsidy Sources

First Other Rental Subsidy source (list both name and address)

Date Other Subsidy Applied for: _____ Date
Other Subsidy Awarded: _____
Date Award expected, if not yet received: _____
Number of Other Subsidy units applied for: _____
Number of MHSA Units applied for from 1st Other Subsidy Source _____
Term of Other Subsidy: _____
Amount of Other Subsidy per unit: _____
Contact name for Other Rental Subsidy source
Name and Title: _____
Phone number: _____
Email: _____

Second Other Rental Subsidy source (list both name and address)

Date Other Subsidy Applied for: _____ Date
Other Subsidy Awarded: _____
Date Award expected, if not yet received: _____
Number of Other Subsidy units applied for: _____
Number of MHSA Units applied for from 2nd Other Subsidy Source _____
Term of Other Subsidy: _____
Amount of Other Subsidy per unit: _____
Contact name for Other Rental Subsidy source
Name and Title: _____
Phone number: _____
Email: _____

**Attachment B: Financial Spreadsheet for Calculating Capitalized
Operating Subsidy**

Attachment B		Financial Spreadsheet for Capitalized Operating Subsidy																		
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Y
RENTAL INCOME																				
Units - MHSA HP Operating Subsidy	Assumed 227	2,722	2,790	2,859	2,931	3,004	3,079	3,156	3,235	3,316	3,399	3,484	3,571	3,660	3,752	3,846	3,942	4,040	4,141	
Affordable Rent Increase		2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	
MHSA HP Units with Other Rental Subsidies		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Rental Subsidy Increase		2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	2.50%	
TOTAL RENTAL INCOME		2,722	2,790	2,859	2,931	3,004	3,079	3,156	3,235	3,316	3,399	3,484	3,571	3,660	3,752	3,846	3,942	4,040	4,141	
OTHER INCOME																				
Laundry		96	98	100	102	104	106	108	110	112	115	117	119	122	124	127	129	132	134	
Other Income		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Other Income Increase		2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	
TOTAL OTHER INCOME		96	98	100	102	104	106	108	110	112	115	117	119	122	124	127	129	132	134	
GROSS POTENTIAL INCOME		2,818	2,888	2,959	3,033	3,108	3,185	3,264	3,345	3,428	3,514	3,601	3,690	3,782	3,876	3,972	4,071	4,172	4,276	
VACANCY ASSUMPTIONS																				
MHSA Restricted		10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	
Other Rental Subsidy Income		3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	3.00%	
Laundry & Other Income		10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	
Other		10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	10.00%	
LESS: VACANCY LOSS		282	289	296	303	311	319	326	335	343	351	360	369	378	388	397	407	417	428	
EFFECTIVE GROSS INCOME		2,536	2,599	2,663	2,729	2,797	2,867	2,938	3,011	3,086	3,162	3,241	3,321	3,404	3,488	3,575	3,664	3,755	3,848	
OPERATING EXPENSES																				
Annual Expense Increase	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	
Expenses		5,500	5,693	5,892	6,098	6,311	6,532	6,761	6,998	7,242	7,496	7,758	8,030	8,311	8,602	8,903	9,214	9,537	9,871	
Annual Tax Increase	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%	
Taxes and Assessments		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Percentage Increase Yearly	0.00%	0.00%	0.00%	0.00%	5.00%	0.00%	0.00%	0.00%	0.00%	0.00%	5.00%	0.00%	0.00%	0.00%	0.00%	5.00%	0.00%	0.00%	0.00%	
Replacement Reserve		500	500	500	500	525	525	525	525	525	551	551	551	551	551	579	579	579	579	
TOTAL EXPENSES		6,000	6,193	6,392	6,598	6,838	7,057	7,286	7,523	7,767	8,047	8,310	8,581	8,862	9,153	9,482	9,793	10,116	10,450	
NET OPERATING INCOME		(3,464)	(3,594)	(3,728)	(3,868)	(4,039)	(4,191)	(4,348)	(4,512)	(4,682)	(4,885)	(5,069)	(5,280)	(5,458)	(5,665)	(5,907)	(6,129)	(6,361)	(6,601)	
DEBT SERVICE/Annual Fees																				
Annual Bond Issuer Fee		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
MHP Debt Service- \$110,000	0.42%	462	462	462	462	462	462	462	462	462	462	462	462	462	462	462	462	462	462	
MHSA Admin Fee \$100,000	0.42%	420	420	420	420	420	420	420	420	420	420	420	420	420	420	420	420	420	420	
Sum of all req'd debt service/annual fees		882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	
ASSET MANAGEMENT FEE (\$18,000/yr)																				
OER	3.00%	180	186	193	200	207	214	221	229	237	245	254	263	272	282	291	302	312	323	
On Site Service Coordinator/unit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Percentage Increase Yearly	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%	
Deferred Developer Fee (\$300,000)		882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	882	
Negative Carry		(5,938)	(6,092)	(6,253)	(6,419)	(6,618)	(6,797)	(6,984)	(7,179)	(7,380)	(7,616)	(7,851)	(8,095)	(8,348)	(8,609)	(8,878)	(9,155)	(9,440)	(9,733)	
Subsidy Required		5,938	6,092	6,253	6,419	6,618	6,797	6,984	7,179	7,380	7,616	7,851	8,095	8,348	8,609	8,878	9,155	9,440	9,733	
MHSA Subsidy per Unit/Month		866	508	521	535	551	566	582	598	615	635	659	688	718	750	784	820	858	900	
Total MHSA/Other Subsidies/Month		5,938	6,092	6,253	6,419	6,618	6,797	6,984	7,179	7,380	7,616	7,851	8,095	8,348	8,609	8,878	9,155	9,440	9,733	
Annual Percentage Increase in Subsidy		2.60%	2.63%	2.67%	3.09%	2.72%	2.75%	2.78%	2.81%	3.19%	-8.73%	3.25%	3.27%	3.29%	3.67%	3.31%	3.33%	3.35%		
Gross Shortfall (\$148,248)																				
Interest earnings/20 years	60,386																			
Est. Cap. Subsidy & Balance	100,000	100,000	89,468	87,981	85,829	83,436	80,739	77,743	74,428	70,771	66,751	62,316	58,370	53,982	49,166	43,892	38,102	31,792	24,928	
Annual Interest on Reserve	4.75%	4,750	4,750	4,250	4,179	4,077	3,963	3,835	3,693	3,535	3,362	3,171	2,960	2,773	2,564	2,335	2,085	1,810	1,510	
Annual Interest Loss/quarterly payment	2.38%	(141)	(145)	(149)	(152)	(157)	(161)	(166)	(170)	(175)	(181)	(185)	(190)	(196)	(202)	(209)	(217)	(225)	(234)	
270 day additional subsidy cushion	(4,453)																			
Subsidy Payment	(5,938)	(6,092)	(6,253)	(6,419)	(6,618)	(6,797)	(6,984)	(7,179)	(7,380)	(7,616)	(7,851)	(8,095)	(8,348)	(8,609)	(8,878)	(9,155)	(9,440)	(9,733)	(10,033)	
Remaining Reserve Balance	89,468	87,981	85,829	83,436	80,739	77,743	74,428	70,771	66,751	62,316	58,370	53,982	49,166	43,892	38,102	31,792	24,928	17,474	10,000	
Subsidy Cost Per Unit	10,381	6,092	6,253	6,419	6,618	6,797	6,984	7,179	7,380	7,616	7,851	8,095	8,348	8,609	8,878	9,155	9,440	9,733	10,033	
Subsidy cost Per Month/unit	866	508	521	535	551	566	582	598	615	635	659	688	718	750	784	820	858	900	945	
Sum Adj Subsidy with 270 day cushion	152,702																			
ASSUMPTIONS																				
# MHSA Units	1																			
# Occupants	1																			
Total Household Income	\$ 856.00																			
Type of unit	1 bedroom																			
SSI/SSP Grant	\$ 856.00																			
Additional Household Income (tanf)	\$ -																			
FSP or Non FSP	FSP																			
Percent of Income	30%																			
Total Units/Bldg	34																			
Utility Allowance	\$ 30																			
Vacancy/MHSA	10%																			
Annual Service Coordinator salary & benefits	\$ 54,900																			
Ratio MHSA Units/Coordinator																				
Per unit Service Cost/Non FSP	\$ -																			
Per unit Service Coordinator cost/FSP	\$ -																			

Year 20 capital subsidy balance should equal the year 20 of operating expenses

Year	Operating Expenses	Subsidy Needed	Subsidy Balance
Year 20	11,153	9,357	643
Year 19	10,795	9,051	9,392
Year 18	10,450	8,757	17,474
Year 17	10,116	8,473	24,928
Year 16	9,793	8,200	31,792
Year 15	9,482	7,937	38,10

Attachment C: MHSA Housing Program Term Sheet

8/6/2007

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**DRAFT MENTAL HEALTH SERVICES ACT HOUSING PROGRAM
TERM SHEET**

<p>Program Description</p>	<p>The Mental Health Services Act Housing Program (MHSA Housing Program) offers permanent financing and capitalized operating subsidies for the development of permanent supportive housing, including both rental housing and shared housing, to serve persons with serious mental illness who are homeless, or at risk of homelessness (as defined by the MHSA Housing Program), and who otherwise meet the MHSA Housing Program target population description. This program is jointly administered by the California Housing Finance Agency (CalHFA) and the Department of Mental Health (DMH).</p>
<p>Permanent Loans</p>	<ul style="list-style-type: none"> • The MHSA Housing Program will fund one-third of the costs of a Rental Housing Development up to a maximum of \$100,000 per targeted unit ("apartment"). Amounts over \$100,000 per unit, up to one-third of total development costs per targeted unit, will be considered on an exception basis, if requested by the county. • The MHSA Housing Program will fund all of the costs of a Shared Housing Development up to \$100,000 per targeted unit ("bedroom"), provided that each bedroom is restricted for rental to a tenant who meets the target population definition. Developers will not need to supplement MHSA Housing Program funds with other capital sources in Shared Housing Developments unless the costs exceed \$100,000 per bedroom. • Interest and principal payments will be made from net cash flow (residual receipts). The payment of unpaid interest and principal will be due and payable upon completion of the loan term. All residual receipts payments received by CalHFA will be credited to the development and deposited back into the respective county's sub-account, to be used as additional operating subsidies for the development, if needed, or if not, for future developments. • Permanent loan proceeds will be available at construction loan closing or permanent loan closing, at the election of the borrower. • Permanent loan proceeds may be used for all costs associated with the acquisition and development of the property, including reimbursing the developer for predevelopment costs and acquisition costs. Permanent loans will be secured against the property and the improvements. • MHSA Housing Program permanent loan limits will be based on the number of units restricted to the target population and not on the total number of units in the proposed development. • MHSA Housing Program loan funds may trigger prevailing wage requirements. Applicants are advised to consult their attorney on this issue.
<p>Rates and Terms</p>	<ul style="list-style-type: none"> • An administrative fee of 0.42% of the outstanding principal balance shall be due and payable annually. This fee shall be paid to CalHFA for administrative services. • Interest and principal payments will be made from net cash flow (residual receipts). • The interest rate on Rental Housing Developments will be fixed at 3% but may differ if tax credits are involved. When tax credits are involved, interest rates may be set lower than 3%, provided the applicant demonstrates that an interest rate reduction is necessary for tax-related reasons.

	<ul style="list-style-type: none"> • Interest rates on Shared Housing Developments will be fixed at 3%. • The loan term for both Rental Housing Developments and Shared Housing Developments shall be 20 years, or longer if required by other funding sources or if tax credits are involved. Upon the request of the Developer, the loan term may be extended to up to 55 years. The Developer may request an extension of the loan term in its application or at any time prior to final commitment of the loan. The Regulatory Agreement shall be extended to match the longer loan term. • Accrued interest and principal will not be forgivable at maturity for developments that have received an allocation of low income housing tax credits. • Accrued interest, but not principal, may be forgiven at maturity for Shared Housing Developments and Rental Housing Developments that have not received an allocation of low income housing tax credits if 1) the property was used in accordance with the MHSA Housing Program guidelines throughout the loan term; 2) the loan term is extended for a time period to be determined by CalHFA; 3) the Regulatory Agreement is extended for the term of the extended loan; and 4) adequate provisions are made for the continued use of the targeted units for the MHSA Housing Program target population. Alternately, accrued interest may be forgiven if the property is sold at maturity and the sale proceeds are invested in a property that has a like use and is encumbered by an MHSA Housing Program Regulatory Agreement, and the new note/deed of trust is in the amount of the original MHSA Housing Program permanent loan. • Accrued interest will not be forgiven at maturity if the property is converted to a different use or if the property is sold and the proceeds of the sale are not reinvested in a property that has a like use and is encumbered by an MHSA Housing Program Regulatory Agreement, with a new note/deed of trust in the amount of the original MHSA Housing Program permanent loan. • If applicable, the loan term for Rental Housing Developments with HUD 811 loans shall be consistent with HUD requirements. The 0.42% administrative fee shall be due as a lump sum at loan disbursement. • Disbursed MHSA Housing Program capitalized operating subsidies may be either a grant or a deferred loan, at the election of the borrower.
<p>Approved Housing Types</p>	<p>Both Rental Housing Developments and Shared Housing Developments are permitted as defined below.</p>
<p>Shared Housing Developments</p>	<ul style="list-style-type: none"> • A Shared Housing Development is a residential building that contains one or more traditional residential units. All bedrooms in a Shared Housing unit shall be targeted to a member of the MHSA Housing Program target population. • All units in a Shared Housing Development shall be rented to and shared by two or more unrelated adults, each of whom is a member of the MHSA Housing Program target population. While this program is intended primarily for unrelated adult house-mates, nothing in this definition excludes the spouse, adult partner, and/or child of an MHSA Housing Program qualified tenant from sharing the bedroom of the qualified tenant, up to housing occupancy limits. • To qualify for funding, a Shared Housing Development must provide a lease and a separate lockable bedroom for each MHSA Housing Program tenant; the MHSA Housing Program tenant must be responsible for paying rent; and all bedrooms in each residential unit must be targeted for occupancy by a member of the MHSA

	<p>Housing Program target population.</p> <ul style="list-style-type: none"> • Each Shared Housing residential unit must also contain a kitchen and full bathroom; units with three or more bedrooms must contain a full bathroom and a half bathroom; units with five or more bedrooms must contain two full bathrooms. • A Shared Housing Development may consist of a 2- to 4- unit apartment building, provided that all units in the building are targeted for use as Shared Housing. Larger apartment buildings may be permitted on an exception basis. • Single-family homes and condominiums may also qualify as a Shared Housing Development provided that they have a minimum of two bedrooms. • One-bedroom or studio units in duplexes, triplexes and four-plexes may qualify as Shared Housing units provided that all two-bedroom and larger units in the building are Shared Housing units. For example, a 4-unit building with 2 two-bedroom units, and 2 one-bedroom units will qualify as a Shared Housing Development, provided that all 6 bedrooms are lockable and intended for use by MHSA Housing Program qualified tenants. • Shared Housing Developments cannot be located in Rental Housing Developments. • One apartment/bedroom may be made available for a manager's apartment/bedroom, at the borrower's option, even if Shared Housing Development is not required by California law to have a manager's unit.
<p>Rental Housing Developments</p>	<ul style="list-style-type: none"> • A Rental Housing Development is an apartment building or buildings with no less than five residential units. • Each MHSA Housing Program targeted unit must have a lease signed by all adult members of the household. The lease must contain language that the targeted unit must be occupied by a qualifying member of the MHSA Housing Program target population. • Each residential housing unit funded by the MHSA Housing Program must be targeted to a qualifying member of the MHSA Housing Program target population, as determined by DMH and the sponsoring county, or alternatively. • If there are other household members occupying the unit who are not members of the MHSA Housing Program target population, and the target population member no longer resides in the targeted unit for whatever reason, the other household members may continue to occupy the targeted unit if the development is a mixed-population development and the housing provider is able to supply a newly vacant non-targeted unit in the same development to an MHSA Housing Program-eligible person. If the development is a single-population development, or no non-targeted vacant units are available, the other household members may continue to occupy the unit for a grace period of 90 days. Capitalized operating subsidies will continue through the end of the grace period. During this grace period, the housing provider will work with the remaining household members to find alternate housing accommodations. If the remaining household members do not find alternate accommodations within the grace period, the borrower shall start eviction proceedings. (This policy is similar to HOPWA requirements. HOPWA is HUD's "Housing Opportunities for Persons with AIDS" program. The HOPWA regulations require housing providers to establish a reasonable grace period following the death of the household member with AIDS. During the grace period, the surviving household members may continue to reside in the HOPWA unit and participate in available social services. The HOPWA regulations also contemplate that the housing provider will assist the surviving household members in

	<ul style="list-style-type: none"> • locating new housing.) • Rental Housing Developments may include both general occupancy buildings and special occupancy buildings. Special occupancy buildings include both senior housing and housing for transition-age youth. For purposes of such buildings, a transition-age youth is an individual who, at initial occupancy, meets the definition of "homeless youth" as defined by California statute. • All units shall include, at a minimum, a sleeping area, a kitchen area and a bathroom. The kitchen area shall at a minimum consist of a sink, refrigerator, counter area, microwave or oven, and a two-burner stove or built in cook top. • All Rental Housing Developments will be required to have adequate space for supportive services staff and service programs. Exceptions may be made for existing buildings where this requirement is not feasible. In buildings with 5 to 100 units, at least 10% of the units, but no fewer than 5 units per development, shall be set aside for members of the MHSA Housing Program target population. In buildings with more than 100 units, at least 10 units shall be set aside for members of the target population. • One unit may be made available for a manager's unit, at the borrower's option, even if the Rental Housing Development is not required by California law to have a manager's unit. Additional managers' units may be made available consistent with California law. • Rental Housing Developments smaller than five units may be considered on an exception basis.
<p>County Applicants</p>	<ul style="list-style-type: none"> • Applications shall be submitted to DMH and CalHFA via county mental health departments, which shall apply for funding in conjunction with and on behalf of a qualified developer/borrower. • The submission by the county mental health department will signify the county's approval of all of the following: <ol style="list-style-type: none"> 1) The capital funding request for the development, 2) The capitalized operating subsidy funding request for the development, and 3) A commitment by the county mental health department to provide funding for supportive services for the residents of the development who are members of the target population for the term of the MHSA Housing Program loan. 4) Other items, to be determined, as required by DMH.
<p>Qualified Developers and Borrowers</p>	<ul style="list-style-type: none"> • Qualified developers include: <ol style="list-style-type: none"> 1) Developers with a track record of successful housing development and a history of serving the target population, 2) Developers with a track record of successful housing development but with no history of serving the target population, but with a strong contract/Memorandum of Understanding with a qualified service provider and property manager, and the assistance of qualified consultants with a history of successfully working with developers to house the target population, 3) A qualified supportive services provider with a joint venture developer partner with a history of successful development, who has entered into a strong contract/Memorandum of Understanding with a qualified property manager, and

	<p>has the assistance of qualified consultants who have a history of successfully working with similar joint venture partners to house the target population,</p> <ol style="list-style-type: none"> 4) A qualified supportive services provider with a qualified development team that has a history of successful development and that has entered into a contract/Memorandum of Understanding (acceptable to CalHFA) with a qualified property manager, or 5) For a Shared Housing Development that consists of a condominium, single family home, duplex, triplex and/or four-plex, an appropriate agency of the county. <ul style="list-style-type: none"> • The developer and its affiliate organizations will be evaluated both for their ability to successfully develop and manage the real estate component of the development, and for their ability to partner with a service provider or lead service provider to deliver high-quality services to the target population. • The borrower must be legally organized as one of the following: <ol style="list-style-type: none"> 1) A limited partnership (LP). The managing general partner of the LP must be a 501(c)(3) corporation or a limited liability company (LLC) whose sole member or members are 501(c)(3) corporations; 2) A 501(c)(3) corporation; 3) An LLC whose sole member or members are 501(c)(3) corporations; 4) An affiliate of a local redevelopment agency; 5) An affiliate of the county created to hold properties financed with MHSA Housing Program funding, or 6) An affiliate of a local housing authority created to hold MHSA Housing Program properties. • The borrower also must be organized as either <ol style="list-style-type: none"> 1) A single asset entity (in the case of a LP or LLC), or 2) A separate legal entity that only holds properties that have MHSA Housing Program funding, as appropriate.
<p>MHSA Loan Allocations Per County</p>	<ul style="list-style-type: none"> • Each county will have MHSA Housing Program capital and capitalized operating subsidy funds allocated to them by DMH. The permanent (capital) loans and capitalized operating subsidy awards made under the MHSA Housing Program in a given county will be limited to the funds available to each county under the DMH allocation formula, plus any interest earned while the funds are being held by CalHFA. • Initially, \$400 million will be available to counties for this program. • Nothing shall prohibit county mental health departments from utilizing other available funds for this program to supplement their MHSA Housing Program allocations.
<p>Small Counties</p>	<ul style="list-style-type: none"> • Eight percent of the total funds allocated to the MHSA Housing Program by DMH will be allocated for small county applications under this program. The MHSA funds set aside for small counties are currently estimated to be approximately \$9.2 million per year of the available \$115 million total annual allocation. • To be identified as "small," the county must have 200,000 or fewer residents in accordance with MHSA requirements, based on the most recent census.

	<ul style="list-style-type: none"> • The application process will be the same for large and small counties. However, CalHFA may waive some of the program requirements for small county applications. Requests for waivers will be reviewed on a case-by-case basis. • These funds may be combined by small counties to create developments that serve regional needs. • While it is anticipated that the MHSA Housing Program is sufficiently flexible to meet the needs of small counties, alternate program provisions may be developed if they are needed to address the unique needs of small counties.
<p>Funding Levels</p>	<ul style="list-style-type: none"> • The MHSA Housing Program will fund one-third of the costs of the MHSA Housing Program targeted units in a Rental Housing Development up to a maximum of \$100,000 per targeted unit. Amounts over \$100,000, up to one-third of total development costs per targeted unit, will be considered on an exception basis, if requested by the sponsoring county. • No MHSA Housing Program funding will be provided for non-targeted units in Rental Housing Developments, and the developer must provide 100% of the capital costs of the non-targeted units from other sources. • 100% of the capital costs of Shared Housing Developments up to \$100,000 per bedroom will be provided by this program, provided that each bedroom is targeted for rental to a tenant who meets the target population definition. • Capital costs above the MHSA Housing Program funding limits for Rental Housing Developments and Shared Housing Developments may be obtained from grants, tax credits, other deferred, forgivable or residual receipts loans from governmental and private loan sources, and other county mental health funds. • Fully amortizing loans may also be used, subject to the restrictions below. <ul style="list-style-type: none"> ❖ Fully amortizing loans will be allowed for those Rental Housing Developments or Shared Housing Developments that do not receive MHSA Housing Program capitalized operating subsidies. ❖ MHSA Housing Program capitalized operating subsidy funds may not be used to make amortized debt service payments, with the exception of the MHSA Housing Program Administrative Fee of 0.42% and the HCD Prop 1C required interest payment of 0.42%. ❖ Fully amortizing loans will be allowed for Rental Housing Developments that receive MHSA Housing Program capitalized operating subsidies on an exception basis if all of the following conditions are met: <ul style="list-style-type: none"> • The rents on the non-MHSA Housing Program units are high enough to fully support amortizing debt, and • The operating budgets are bifurcated sufficiently to ensure that the amortizing debt payments are not being paid from MHSA Housing Program capitalized operating subsidy funds. • Developers are advised to consult their attorneys regarding potential legal conflicts between different housing funding sources.
<p>Subordinate Financing</p>	<ul style="list-style-type: none"> • Subordinate loans or grants are encouraged from local government and third parties to achieve project feasibility.

	<ul style="list-style-type: none"> • The MHSA Housing Program Regulatory Agreement and Loan Documents will be subordinate to construction loan documents, fully amortizing permanent loans, and HUD 811 Use Agreements and loan documents. Subordination to other HUD documents will be considered on a case-by-case basis • The MHSA Housing Program Regulatory Agreement and Permanent Loans may be subordinate, upon CalHFA approval, to other residual receipts/deferred permanent loans from federal and local sources, provided that those loans are twice the amount of the MHSA Housing Program permanent loan or larger. • The HCD/MHP housing program permanent loans and regulatory agreements will be subordinated to the MHSA Housing Program permanent loans, provided that there is in place a "risk-sharing provision" regarding disposition of the assets upon foreclosure, acceptable to both agencies. • All other loan documents, loans, leases, recorded use agreements, and recorded grant agreements must be subordinate to the MHSA Housing Program Permanent Loan Documents and Regulatory Agreements.
<p>Rent and Occupancy Requirements</p>	<ul style="list-style-type: none"> • All MHSA Housing Program units must be targeted for occupancy by MHSA Housing Program target population households. • All MHSA Housing Program targeted units ("bedrooms") in Shared Housing Developments must be targeted to households earning 50% or less of the area median income (as adjusted by household size). • All MHSA targeted units in Rental Housing Developments, must be targeted to households earning 50% or less of the area median income (as adjusted by household size). • CalHFA may, at its discretion, eliminate the income restrictions or, alternatively, reduce the number of income-restricted MHSA Housing Program units when the local jurisdiction does not have Article 34 authority, as long as the units remain targeted to MHSA Housing Program target population members and the rents are restricted to 50% AMI. • Rents in MHSA Housing Program targeted units in Rental Housing Developments must be restricted to 30% of 50% of the area median income (as adjusted by household size). Rents in MHSA Housing Program targeted bedrooms in Shared Housing Developments must be restricted to 30% of 50% of the county area median income (as adjusted by household size). Applicants are encouraged to restrict rents for MHSA Housing Program targeted units to 30% of 30% or less of area median income (adjusted by household size). • For units with MHSA Housing Program capitalized operating subsidies, the tenant portion of the rent must be set no lower than 30% of the current SSI/SSP grant amount for a single individual living independently, for a studio unit/one-bedroom unit, or 30% of total household income, whichever is higher. • For units with MHSA Housing Program capitalized operating subsidies, if the capitalized operating subsidy is exhausted and is not renewed, the tenant portion of the rent on the MHSA targeted units may be increased to the restricted rent (50% AMI) with CalHFA's written permission. Permission sought all available reserves or subsidies, including seeking a subsequent allocation of capitalized operating reserves and/or rent subsidies from the county mental health department, and is still unable to meet fiscal integrity requirements. In order to allow for a reasonable transition and a

	<p>gradual adjustment, an Owner may petition to increase rents on MHSA Housing Program units a maximum of 24 months prior to the estimated date upon which fiscal integrity will be lost. If an MHSA Housing Program targeted unit becomes vacant during this period and the owner can establish that it has made all reasonable efforts to rent to higher-income MHSA Housing Program eligible households, the owner may rent to non-MHSA Housing Program eligible households. However, the owner must continue to make all reasonable efforts to seek alternative subsidies that would permit the owner to serve MHSA Housing Program eligible households. In the event an owner succeeds in obtaining subsidies sufficient to lower rents partially or completely to the originally regulated standard and meet fiscal integrity, the owner shall be required to rent the next available unit to an income-eligible MHSA Housing Program household. This provision shall also apply when a rental subsidy contract from a source other than the MHSA Housing Program is lost or is not renewed.</p>
<p>Reserve Requirements</p>	<ul style="list-style-type: none"> • A minimum of three months of the first year's operating cost must be capitalized as an operating reserve. This reserve will be held for the term of the MHSA Housing Program loan. • A minimum of 10% of the first year's operating cost must be reserved as a rent-up reserve. • A minimum replacement reserve deposit of \$1,000/unit must be capitalized on acquisition rehabilitation projects. This may be limited to MHSA Housing Program targeted units at CalHFA's discretion. • Minimum annual replacement reserve deposits of \$500/unit/year shall be required. • These amounts may be revised from time to time by CalHFA.
<p>Allowable Costs</p>	<ul style="list-style-type: none"> • All costs normally allowed as development costs for supportive housing by CalHFA are allowable costs for MHSA Housing Program loans. Developer fees may be no higher than those allowed by TCAC and will be reviewed individually for appropriateness. • Up to two years of transition reserve, if required by HCD/MHP. • Up to 100% of the first year's operating cost may be capitalized as a regular operating reserve. • Up to \$3,000 per unit of replacement reserves may be capitalized if funds are available in the development budget. • Between three to six months of rent-up reserves may be capitalized, depending upon the tenant certification procedures required by the county for MHSA Housing Program targeted units. • Ground lease payments must be capitalized in the development budget, and cannot be amortized over the term of the loan.
<p>Capitalized Operating Subsidies</p>	<ul style="list-style-type: none"> • The borrower and the county mental health department may apply for a reservation of capitalized operating subsidies for the MHSA Housing Program targeted units. • Priority in allocating capitalized operating subsidies will be given to Rental Housing Developments. • Only the operating costs of MHSA Housing Program targeted units may be subsidized with capitalized operating subsidies. Non-targeted unit costs, including supportive

	<p>services costs, are not eligible costs and must be accounted for in a separate, bifurcated budget.</p> <ul style="list-style-type: none"> • Capitalized operating subsidies reserves to will be sized to allow for operating subsidies for 18 years. CalHFA may increase the reserve amount to allow capitalized operating subsidies for 20 years to the extent that funds are available within the \$100,000 per unit cap. • Capitalized operating subsidies will be capitalized at permanent loan conversion/closing and held by CalHFA in an interest-bearing reserve account for the benefit of the development. • Capitalized operating subsidies start at the point the development receives its Certificate of Occupancy for new construction projects, or at recorded notice of completion for acquisition-rehabilitation projects. • Capitalized operating subsidies will be disbursed quarterly, in advance. The first advance will have an additional 270-day cushion, which additional cushion may not be spent unless authorized by CalHFA. • Capitalized operating subsidy reserves will not be the property of the development. Capitalized operating subsidy reserves not needed by the development, as determined by CalHFA, will be recaptured for other MHSA Housing Program developments of the applicant county. • A development's capitalized operating subsidy reserve will be sized based on a review of the difference between the tenant portion of the rent and operating expenses in the proforma first-year operating budget, a 2.5% annual income escalator and a 3.5% annual cost escalator. Interest earnings on the reserve will be factored into the cost escalator calculation. • The capitalized operating subsidy payments will be reconciled with actual operating costs every year or as required. • Occupancy will be reviewed annually. • Capitalized operating subsidies will be reduced or terminated for developments that do not rent their targeted units to members of the MHSA Housing Program target population. • Capitalized operating subsidies will be reduced or temporarily stopped for MHSA Housing Program targeted units when the resident has a housing choice voucher (HCV), absent mitigating circumstances • Capitalized operating subsidies are only available while a member of the MHSA Housing Program target population resides in the unit (that is, not during months in which the target population member has moved out of the unit), except that: <ul style="list-style-type: none"> ❖ Capitalized operating subsidies will continue if the MHSA Housing Program target population member is in a hospital, an acute or long-term care facility, or other institutional setting for up to three months; ❖ Capitalized operating subsidies will continue through the end of the 90-day grace period following the date the MHSA Housing Program target population member moves out of the unit; and ❖ Capitalized operating subsidies will continue for two months upon vacancy of an MHSA Housing Program unit that receives capitalized operating subsidies. • If family members, who are not members of the MHSA Housing Program target population, continue to reside in the unit after the MHSA Housing Program target population member is no longer in residence, they must be given timely legal notice
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	<p>that the capitalized operating subsidy has been terminated and the rent for the unit will increase to the lease rate, or alternately, the market rent or the highest restricted rental rate beginning 90 days after the MHSA Housing Program target population member has left the unit.</p> <ul style="list-style-type: none"> • Capitalized operating subsidies will not be available for developments that do not receive permanent loan funds from the MHSA Housing Program. • Capitalized operating subsidy reserve awards will be made at loan commitment but will be conditioned upon a demonstration, prior to permanent loan closing, that the Developer has applied in good faith for other available rental housing subsidies for the development, and been unsuccessful in its application(s). Developers will be asked to identify in their applications the rental subsidy source or sources for which are applying and why they are pursuing that source or sources. The determination of the appropriateness of the source or sources will be made during the underwriting process. Documentation of good faith application to the alternate source or sources will be required during the underwriting process. Developers will only be required to apply for other subsidies in one award cycle. • Developments that receive rental or operating subsidy contracts from other sources that have a term of less than 18 years may also apply for a back-up award for MHSA Housing Program capitalized operating subsidies for the time period not covered by their other subsidy contract(s), provided that they agree to apply for all available extensions of subsidy contract(s) they receive. Back-up awards will be dependent on the availability of funds. Back-up capitalized operating subsidy reserves not needed by the development, as determined by CalHFA, will be recaptured for other MHSA Housing Program developments. • Asset management fees of \$30/unit/month per MHSA Housing Program unit may be paid from capitalized operating subsidies, up to \$18,000 per development. • Bond issuance fees may be paid from capitalized operating subsidies. • Ground lease payments may not be paid from capitalized operating subsidies unless they are token payments. • Deferred developer fees may be paid from capitalized operating subsidies to the extent that funds are available within the \$100,000/unit cap after all operating and replacement and operating reserves, the CalHFA Administrative fee and, if applicable, the HCD minimum interest payment and any bond fees have been paid. • Service coordinator salaries and benefits may be paid from capitalized operating subsidies but only to the extent that funds are available within the \$100,000/unit cap after all operating costs, replacement and operating reserves, the CalHFA Administrative fee and, if applicable, the HCD minimum interest payment, any bond fees, and deferred developer fees have been paid. • Annual replacement reserves deposits, and a 3% Operating Reserve, may be paid from capitalized operating subsidies. • All developments will be required to apply for the "welfare tax exemption" (property tax exemption), and will be required to maintain that exemption for the term of the loan. • Developments receiving MHSA Housing Program capitalized operating subsidy awards may be subject to limitations on distributions.
<p>Asset Management</p>	<ul style="list-style-type: none"> • Replacement reserves and regular operating reserves for the development will be held by CalHFA. This requirement may be waived at CalHFA's discretion.

	<ul style="list-style-type: none"> • CalHFA will hold capitalized operating subsidies in a reserve. • Taxes and insurance will be impounded by CalHFA. This requirement may be waived at CalHFA's discretion. • All developments will be required to submit quarterly financial reports. This requirement may be waived, or more frequent reporting may be required, at CalHFA's discretion. • All developments will be required to submit annual audits prepared by a certified public accountant in accordance with commonly accepted accounting standards. The audit requirement may be waived at CalHFA's discretion or alternately, CalHFA may, at its discretion, substitute a different form of financial certification for Shared Housing Developments and small Rental Housing Developments of 25 units or fewer.
<p>Services</p>	<ul style="list-style-type: none"> • The borrower must provide a clearly articulated service delivery program and property management plan. • The services provided must be appropriate to the target population, and designed to assist the MHSA Housing Program target population residents to live independently. • The borrower must have a commitment for service funding from the county mental health department upon submission of the MHSA Housing Program loan application. All developments must identify a qualified service provider that will provide supportive services to the residents. In the event that there are multiple service providers, the application must identify a primary service provider for the development. The borrower will be required to arrange for the provision of services for the term of the MHSA Housing Program loan. • All applications must include a supportive services plan, which must meet MHSA Housing Program requirements and must be approved by DMH. A supportive services budget will be required by CalHFA as a condition of funding. • All developments must provide an MOU between the borrower, primary service provider, property management agent and the county mental health department that clearly delineates the roles and responsibilities of the parties.
<p>Target Population</p>	<ul style="list-style-type: none"> • DMH has defined the target population as low-income adults or older with serious mental illness as defined in Welfare and Institutions Code Section 5600.3 (b) (1), and children with severe emotional disorders and their families, who at time of assessment for housing services meet the criteria for the Community Services and Support component of the Three-Year Program and Expenditure Plan in their county of residence and are homeless or at risk of homelessness. <ul style="list-style-type: none"> ❖ Homeless is defined as living on the streets, or lacking a fixed, regular, and adequate night time residence. (This includes shelters, motels and living situations in which the individual has no tenant rights.) ❖ At risk of homelessness includes the following: transition-age youth exiting foster care or juvenile hall; individuals discharged from institutional settings, individuals released from local city or county jails; individuals temporarily placed in Residential Care Facilities upon discharge from one of the institutional settings defined below, and individuals who have been assessed and are receiving services at the county mental health department, and who have been deemed to be at imminent risk of homelessness, as certified by the county mental health director.

	<ul style="list-style-type: none"> ❖ Institutional settings is defined as hospitals, including acute psychiatric hospitals, psychiatric health facilities (PHF), skilled nursing facilities (SNF) with a certified special treatment program for the mentally disordered (STP), and mental health rehabilitation centers (MHRC), and crisis and transitional residential settings. • To receive assistance under the MHSA Housing Program, the proposed development must serve the MHSA Housing Program target population and must ensure the provision of services necessary to allow members of the target population to live independently. • CalHFA and DMH reserve the right to review and approve all applications and all supportive services plans for eligibility for the MHSA Housing Program.
<p>Fees</p>	<ul style="list-style-type: none"> • Origination Fee: 1% of the loan amount, which will be due at MHSA Housing Program loan closing, or predevelopment loan closing, whichever occurs sooner. • All third party costs commissioned by CalHFA. Examples of possible third party costs include appraisal reports, physical need assessments, and construction inspection.
<p>Application Process</p>	<p>All developments will be required to submit a completed application with all attachments. The application will be on the DMH and CalHFA web sites. It will include MHSA Housing Program specific requirements and the joint CalHFA, TCAC, CDLAC, and HCD application ("the Universal Application").</p>
<p>Due Diligence</p>	<p>The due diligence reports listed below are required for all developments. Preparation of reports will be at the developer's / borrower's expense:</p> <ul style="list-style-type: none"> • A management contract with a qualified property manager. • Plans and Specifications for new construction. • Plans and specifications and a narrative scope of work for acquisition/rehabilitation developments. • Plans and Specifications are not required for Shared Housing Developments where rehabilitation is not required. • Plans should provide for supportive services space, and office space for service staff as appropriate in Rental Housing Developments. • Three years of audited financials for the developer. • An MOU between the developer, the primary service provider, the property management company and the county mental health department. • A supportive services plan. A supportive services budget will be required as a condition of funding. • A commitment from the county mental health department for services funding. • Qualifications and evidence of experience with similar developments from the developer and development team members, together with resumes for their key personnel. • Property appraisal, market study, Phase I Report, and other studies as appropriate. • <u>Freddie Mac Form #70 (single family) or #72 (small rental) appraisals, as appropriate.</u>

	<ul style="list-style-type: none"> • will be required for Shared Housing appraisals. MAI commercial appraisals will be required for Rental Housing Developments. • Physical Needs Assessments, building inspection reports, sewer camera reports, roof reports, lead-paint, mold, asbestos, and structural (seismic) studies, as appropriate, for acquisition/rehabilitation projects. • Evidence of Article 34 compliance, if applicable.
<p>Predevelopment Loans</p>	<ul style="list-style-type: none"> • Predevelopment loans of up to \$500,000 will be available to all Rental Housing Developments that have received an MHSA Housing Program loan commitment, have obtained all other permanent financing commitments, and can demonstrate site control and receipt of all required local entitlements. • Predevelopment loans of up to \$200,000 will be available to all Shared Housing Developments that have received an MHSA Housing Program loan commitment, have obtained other permanent financing commitments if applicable, and can demonstrate site control and evidence of appropriate zoning. • The predevelopment loan term will be either two years or until construction loan closing, whichever is sooner. • Interest will be 3% fixed, and will be deferred until construction loan closing. Predevelopment loan interest will be forgiven at construction loan closing. • Predevelopment loan funds will be available for predevelopment costs necessary to complete due diligence required for construction loan closing or permanent financing. Examples of eligible predevelopment costs include engineering studies, Phase 2 studies, and architectural fees, legal fees and the 1% MHSA Housing Program loan fee. • Staffing costs, purchase option costs, and all costs associated with site acquisition are not eligible costs for predevelopment loans. • Predevelopment loans of less than \$200,000 may be secured against the property at CalHFA's discretion. All predevelopment loans in excess of \$200,000 must be secured against the property.
<p>Outcomes Reporting</p>	<ul style="list-style-type: none"> • County mental health departments must meet all DMH Outcomes Reporting requirements. • Specific information regarding housing outcomes will be required for all tenants, as specified in the Regulatory Agreement. This outcomes information must be provided on the MHSA Housing Program Annual Self-Certification form (see CalHFA website). • Developments will also be required to provide data on tenant access to housing subsidies and benefits, including but not limited to the number of tenants who: <ul style="list-style-type: none"> ❖ Are on the Section 8 waiting list, ❖ Are enrolled in the Section 8 voucher program, ❖ Are receiving SSI/SSP, and ❖ Have an application in progress for, but are not yet receiving, SSI/SSP.
<p>Questions</p>	<p>CalHFA will administer this housing program for DMH under an interagency agreement between the two agencies in accordance with DMH regulations, which are currently being</p>

<p>promulgated.</p>	<p>Financing questions regarding the MHSA Housing Program may be directed to CalHFA's Multifamily Programs Division:</p> <p>Edwin Gipson, Chief of Multifamily Programs Phone: (310) 342-6899; Fax: (310) 342-1225 Email: egipson@calhfa.ca.gov</p> <p>Questions on the Mental Health Services Act and DMH regulations may be directed to DMH's MHSA Special Projects unit:</p> <p>Jane Laciste, Chief, Special Projects Phone: (916) 654-3529 Email: jane.laciste@dmh.ca.gov</p>
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IMPORTANT DISCLOSURE INFORMATION:

The information provided in this program description is for guidance only. While we have taken care to provide accurate information, we cannot cover every circumstance or program nuance of the MHSA Housing Program, the Mental Health Services Act and the regulations enacted under it by DMH, and/or housing law. This program description is subject to change from time to time without prior notice.

Attachment D: MHSA Housing Program Application Index and Checklist

Check each item that is included in your application and mark "Not Applicable" or "To be Submitted Later" for each item not included in your application. Insert completed MHSA Housing Program Application Index and Checklist as Table of Contents in the front of your application.

MHSA Housing Program Application Index and Checklist

Select Items Attached	Item	Attachment
	—	Project Overview
Section A: Universal Application		
	UA.1	General Information
	UA.2	Contact Information
	UA.3	Site & Unit Information
	UA.4	Miscellaneous Information
	UA.5	Rents & Unit Mix Information
	UA.6	Subsidy Information
	UA.7	Sources of Development Funds (both construction and permanent)
	UA.8	Development Budget
	UA.9	Permanent Sources & Uses
	UA.10	Annual Income & Expenses
	UA.11	Cash Flow Analysis
	UA.12	Experience
	UA.13	Universal Certifications and Identity of Interest Disclosure
	UA.14	Legal Status Questionnaire
Section B: MHSA Housing Program Supplemental Application (Rental Housing Developments)		
	B.1	Proposed Development Information/Site Control <ul style="list-style-type: none"> a. Design/development-level plans and draft specifications showing site and unit floor plan detail (applicable to new construction only) b. Digital site photos c. Copies of all planning approvals d. Letter from locality evidencing zoning e. Evidence of site control (purchase and sale agreement, deed of trust, ground lease) f. DDA or OPA agreements (if applicable) g. Preliminary report (title) and copies of all exceptions
	B.2	Rents <ul style="list-style-type: none"> a. Rental subsidy contracts, commitment letters, or evidence of application for other rental subsidy programs b. Explanation of additional income (laundry etc.)
	B.2	Operating Budget <ul style="list-style-type: none"> a. Recent tax bill (when available)
	B.4	Development Budget <ul style="list-style-type: none"> a. Copy of the Investor's preliminary economic projections or budget (applicable to tax credit projects only, and when available).
	B.5	Environmental <ul style="list-style-type: none"> a. Soil/Geotechnical reports (applicable to new construction

		<ul style="list-style-type: none"> b. ALTA site survey (applicable to new construction only) c. Phase I or II Report (when available) d. Remediation Plan (if applicable) e. Acoustical/Asbestos/Lead-Based Paint Analysis (if applicable) f. Environmental Impact Statement and Study/CEQA/NEPA documentation (if applicable) g. FEMA Flood Zone designation h. Evidence of flood mitigation (if applicable)
B.6		<p>Marketing Analysis/Appraisal</p> <ul style="list-style-type: none"> a. Appraisal (when available) b. Market Study (when available)
B.7		<p>Acquisition/Rehabilitation Projects Only</p> <ul style="list-style-type: none"> a. Describe current condition of the structure(s) b. Proposed Scope of Work in narrative form or Plans and Specifications (when available) c. Proposed budget for rehabilitation d. Relocation Plan prepared by an industry professional (if applicable) e. Past three months of Rent Roll (applicable to mixed population developments only) f. Development's past two years of financial statements g. Contribution letter from locality (Section 51335 of the Ca. Health and Safety Code) (see sample on CalHFA website) h. Physical Needs Analysis prepared by an industry professional, including replacement reserve analysis including replacement reserve analysis (when available) i. Roof, plumbing and electrical reports/inspections (only applicable if specifically requested by CalHFA) j. Termite reports/dry rot reports (when available) k. Sewer Camera report (when available)
B.8		<p>Owner/Developer Team Information</p> <ul style="list-style-type: none"> a. Two years Profit and Loss Statement from general partner, principal and contractor b. Articles of Incorporation c. Authorizing Board Resolution from each entity d. Certificate of Good Standing e. Partnership Agreement f. Evidence of 501(c)(3) status (if applicable) g. Bylaws h. Certification of Corporation i. LP-1 j. LP-2
B.9		Evidence of Article 34 Compliance
B.10		Application Supplement for Developments Applying for Capitalized Operating Subsidies (see Attachment A of application package)

Section C: MHSA Housing Program Supplemental Application (Shared Housing Developments) – for 1 to 4 unit existing buildings only	
C.1	<p>Proposed Development Information/Site Control</p> <ol style="list-style-type: none"> Digital site photos Letter from locality evidencing zoning (applicable only if 6 or more people are proposed to live at the site) Evidence of site control (purchase and sale agreement, deed of trust, ground lease) All seller disclosure statements Preliminary report (title) and copies of all exceptions
C.2	<p>Rents</p> <ol style="list-style-type: none"> Rental subsidy contracts, commitment letters, or evidence of application for rental subsidies (if applicable).
C.3	<p>Operating Budget</p> <ol style="list-style-type: none"> Recent tax bill (if available)
C.4	<p>Development Budget</p>
C.5	<p>Environmental</p> <ol style="list-style-type: none"> Natural Hazard Disclosure Statement signed by seller Natural Hazard Disclosure Report provided by seller (when available) Environmental Questionnaire and Borrower Certification Form (on the CalHFA website) Mold/Asbestos/Lead-Based Paint Analysis (if applicable) FEMA Flood Zone designation Standard Flood Hazard Determination
C.6	<p>Uniform Residential Appraisal Report (as is), Freddie Mac Form 70</p>
C.7	<p>Acquisition/Rehabilitation Projects Only:</p> <ol style="list-style-type: none"> Property Inspection Report Proposed Scope of Work in narrative form Sketch of unit design alterations (if applicable) Plans and Specifications (when available) Proposed budget for rehabilitation Roof report (when available) Plumbing , structural and electrical reports (only applicable if specifically requested by CalHFA) Termite reports/dry rot reports (when available) Sewer Camera report (when available) Relocation Plan (applicable only if the unit is occupied by a tenant at purchase) Line item budget prepared by the contractor (when available) <p>For New Construction Only:</p> <ol style="list-style-type: none"> Lead/asbestos reports (applicable only for buildings that will be demolished) Site Plan Preliminary Plans and outline specifications (when available)

	C.8	<p>d. Construction Budget from Contractor (when available)</p> <p>Owner/Developer Team Information</p> <ol style="list-style-type: none"> a. Two years Profit and Loss Statement from general partner, principal and contractor b. Articles of Incorporation c. Authorizing Board Resolution from each entity d. Certificate of Good Standing e. Partnership Agreement f. Evidence of 501(c)(3) status (if applicable) g. Bylaws h. Certification of Corporation i. LP-1 j. LP-2
	C.9	Evidence of Article 34 Compliance (if applicable)
	C.10	Application Supplement for Developments Applying for Capitalized Operating Subsidies (see Attachment A of application package)
Section D: MHSA Housing Program Supportive Housing and Services Information		
	D.1	Consistency with Three-Year Program and Expenditure Plan
	D.2	Description of Target Population to be Served
	D.3	Tenant Selection Process
	D.4	Supportive Services Plan
	D.5	Supportive Services Plan Chart
	D.6	Design Considerations for Meeting the Needs of the MHSA Housing Program Target Population
	D.7	Plan for Collecting and Submitting Outcome Data
	D.8	Agreement to Meet DMH Outcome Reporting Requirements
	D.9	County Mental Health Department Sponsorship and Services Verification Form
	D.10	Applicant and Partner Experience Serving Target Population
	D.11	Primary Service Provider Experience Serving Target Population
	D.12	Memorandum of Understanding with Key Partners
	D.13	Property Management Plan
	D.14	Property Management Contract
	D.15	Physical Inspection Plans for Shared Housing Developments
	D.16	Summary and Analysis of Stakeholder Input

**Attachment E: Additional Guidance for Counties on Tenant
Referral and Certification**

**Additional Guidance for Counties
on Tenant Referral and Certification**

This attachment contains additional guidance for counties on developing a Tenant Referral and Certification Process for the MHSA Housing Program. The information provided here is intended to assist county mental health departments in developing a Tenant Referral and Certification Process that meets the MHSA Housing Program requirements related to target populations and can be provided to developers to assist them in developing their development-specific Tenant Selection Plans. The county should ensure that its certification process facilitates initial rent-up within a reasonable timeframe and establishes a consistent ongoing process for tenant certification and referral of eligible MHSA tenants to the proposed development.

It is recommended that each county mental health department develop a standardized MHSA Housing Program tenant certification application for use by all applicants in that county, which describes the criteria for receipt of MHSA Community Services and Support (CSS) services consistent with that county's approved Three-Year CSS Program and Expenditure Plan. Each county plan contains specifics about how the county has prioritized the target populations for receipt of MHSA services, and use of a standardized certification process will help ensure equal treatment and compliance with fair housing laws and regulations. Individuals seeking housing funded by the MHSA Housing Program should complete this standardized tenant certification application, which documents how they meet the county program eligibility. County mental health department staff or qualified contractors should be available to assist individuals in completing the certification application.

At the county's discretion, the tenant certification application for the MHSA Housing Program could be combined into a single certification application that includes assessment for referral to other local housing resources, in order to coordinate the allocation of housing resources and corresponding housing application processes.

The county should determine a reasonable timeframe and procedures for reviewing the tenant certification application. A qualified county mental health department employee or designated contractor should review the tenant certification application to determine whether the individual meets threshold eligibility for the MHSA Housing Program. In addition, the reviewer should certify that, based on the individual's certification application, the issues and/or conditions that establish the individual's eligibility for the housing program are the same issues and/or conditions that significantly interfere with his/her ability to obtain and maintain housing. The reviewer should certify that without the services linked to the MHSA Housing Program, the individual will not be able to obtain or maintain housing. It is recommended that a standardized form for the application review and certification process be developed and used.

If a county elects to combine the tenant certification application for the MHSA Housing Program into a single certification application for all county housing resources, the initial eligibility review process should include representatives authorized to determine eligibility for the non-MHSA resources.

Once an individual is determined to have met the threshold eligibility criteria for the MHSA Housing Program and the certifications described above have been made, that individual should be placed on master wait list maintained by the county mental health

department. As an alternative to a master wait list, the county may choose to maintain individual wait lists for specific developments, as long as MHSA-eligible individuals are offered the opportunity to be on multiple wait lists.

Referral for specific housing unit:

As MHSA Housing Program units become available, individuals on the wait list should be advised of the unit availability in writing. The notice should briefly describe the type of housing unit available and notify the individual that he/she must respond to the county mental health department or the designated contractor within a specific timeframe to indicate whether he/she wishes to be screened for the available unit or would prefer to wait until another housing unit becomes available. This process is intended to provide individuals with the option to choose among available housing options in the county.

If the individual responds that he/she does not want to be considered for the available unit, that individual should be permitted to maintain his/her place on the master wait list and be notified of the next available unit. The next individual on the wait list would then be contacted about the available unit. However, if an individual who has been permitted to maintain his/her place on the master wait list declines to be considered for the next available unit, he/she should be moved to the bottom of the master wait list.

If the individual responds that he/she is interested in the available unit, county mental health department staff or the designated contractor should refer the individual to the housing provider that has the available unit for additional screening. The county mental health department staff or the designated contractor should make arrangements to accompany the individual to the interview and provide support with the process, unless the individual specifically declines assistance.

The process described above should also be followed if the county maintains multiple development-specific wait lists. Additionally, individuals may seek tenancy in developments funded by the MHSA Housing Program through directly approaching the property manager and/or the developer to inquire about qualifying for one of the MHSA Housing Program units. The development should have an established procedure for referring individuals to the county mental health department for certification as well as maintaining a wait list of qualified tenants.

Eligibility determination for specific unit:

The housing provider may only ask the individual questions that are directly related to the individual's ability to meet the requirements of tenancy. This includes questions about source of income to pay rent; a history of nonpayment of rent, or a history of evictions for failure to maintain the premises. Housing providers may also ask the individual if he or she has a criminal conviction, but the request should be related to the terms and conditions of tenancy and determining whether the individual can comply with the lease.

In screening the individual for tenancy, the housing provider should consider whether any conditions described by the applicant that might typically be grounds for denying tenancy (e.g. non-payment of rent, failure to maintain the premises) could be due in part to the circumstances that resulted in the individual being eligible for MHSA services. For example, a seriously mentally ill individual may have had difficulty maintaining his/her

Attachment E

apartment and may thus have been evicted. Consistent with the intent of the Mental Health Services Act, the housing provider should consider whether the MHSA services available to the housing unit will likely enable the prospective tenant to meet the conditions of tenancy.

Once an individual has been selected for tenancy in a specific unit, that individual should be notified in writing and provided a specific occupancy date. County mental health department staff or a designated contractor should be available to assist the individual in making arrangements for and completing the move in.

If the individual is not selected for tenancy in a specific unit, the housing provider should notify the individual in writing and provide a basis for non-selection. The housing provider should also notify the individual of his/her right to appeal the decision. A copy of this notice should also be sent to the appropriate county mental health department or county contractor staff. The county mental health department and MHSA Housing Program providers should establish and maintain a process for managing such appeals.

Attachment F: Supportive Services Chart

Insert completed chart in Tab D.5 of your application.

Attachment G: Agreement to Meet DMH Outcome Reporting Requirements

Insert completed agreement in Tab D.8 of your application.

DMH OUTCOMES REPORTING REQUIREMENTS

To the development sponsor: Provide the development information indicated below. This form will need to be completed by the county mental health department, verifying its commitment to comply with outcomes reporting requirements for MHSA Housing Program tenants.

Development Sponsor: _____

Primary Service Provider: _____

Development Name: _____

Development City: _____

Development County: _____

To the county mental health department: Please complete this form. The county mental health director must sign the form certifying that the county will comply with the outcomes reporting requirements for all MHSA Housing Program tenants.

Commitment to Comply:

We commit to providing the timely submission of all required outcomes reporting to the California Department of Mental Health specific to this application for the duration of the State loan for tenants of the supportive housing development described above.

I hereby certify under penalty of perjury that I am the official responsible for the administration of Community Mental Health Services in and for this County, that this development does not result in the supplantation of funds as set forth in Welfare and Institutions Code Section 5891, and that to the best of my knowledge and belief all statements on this form are true and correct.

Signature: _____

County Mental Health Director

Dated: _____

Agency or Department: _____

Agency or Department Address: _____

Agency or Department Phone: _____

***Attachment H: County Mental Health Department Sponsorship
and Services Verification Form***

Insert completed form in Tab D.9 of your application.

**County Mental Health Sponsorship and Services
Verification Form**

To the development sponsor: Provide the development information indicated below. This form must be completed by the county mental health department, verifying its commitment to provide supportive services to this development.

Development Sponsor: _____

Primary Service Provider: _____

Development Name: _____

Development City: _____

Development County: _____

Name of verifying county mental health department: _____

To the county mental health department: Please complete the remainder of this form. The county mental health director must sign the form certifying that services will be provided as stated:

Commitment to Provide Supportive Services

We commit to provide supportive services as described in the final approved service plan specific to this application for the duration of the State loan for tenants of the supportive housing development described above. The approved supportive services plan is an update to our Three-Year Program and Expenditure Plan for the Community Services and Supports component. We further commit that providing supportive services for this development will be a priority use for county mental health services funds.

I hereby certify under penalty of perjury that I am the official responsible for the administration of Community Mental Health Services in and for this county, that this development does not result in the supplantation of funds as set forth in Welfare and Institutions Code Section 5891, and that to the best of my knowledge and belief all statements on this form are true and correct.

Signature: _____
County Mental Health Director

Dated: _____

Agency or Department: _____

Agency or Department Address: _____

Agency or Department Phone: _____

Attachment I: Development Summary Form

Insert completed form as page 1 of Project Overview in your application.

DEVELOPMENT SUMMARY FORM
MHSA Housing Program

Development Information

County Mental Health Department: _____

Name of Development: _____

Site Address: _____

City: _____ State: _____ Zip: _____

Development Sponsor _____

Development Developer _____

Primary Service Provider _____

- New Construction
- Acquisition/Rehabilitation of an existing structure

Type of development: Rental Housing Shared Housing

Type of building: Apartment Building Single Family Home
 Condominium Other

Total number of units _____ Total number of MHSA units _____

Total cost of the development _____ Amount of MHSA funds requested _____

Request MHSA Funds for Capitalized Operating Subsidies: Yes No

Other Rental Subsidy sources (list if applicable): _____

Target Population (please check all that apply):

- Adults
- Transition-Age Youth
- Children
- Older Adults

County Contact

Name and Title: _____

Phone Number: _____

Email: _____

Attachment J: County Planning Estimates

8/6/2007

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**Attachment J
Initial Planning Estimates for the Community Services and Supports (CSS)
MHSA Housing Program**

	Total Initial MHSA Housing Program Planning Estimates (Including Operating Subsidies)	Maximum Available for MHSA Housing Program Operating Subsidies
Alameda	\$14,619,200	\$4,873,100
Alpine	\$15,700	\$5,200
Amador	\$501,800	\$167,300
Butte	\$2,173,000	\$724,300
Calaveras	\$639,500	\$213,200
Colusa	\$312,200	\$104,100
Contra Costa	\$9,130,800	\$3,043,600
Del Norte	\$416,700	\$138,900
El Dorado	\$2,276,500	\$758,800
Fresno	\$9,248,900	\$3,093,000
Glenn	\$409,400	\$136,500
Humboldt	\$1,955,300	\$651,800
Imperial	\$2,660,000	\$886,700
Inyo	\$222,200	\$74,100
Kern	\$7,932,200	\$2,644,100
Kings	\$2,204,100	\$734,700
Lake	\$942,600	\$314,200
Lassen	\$413,600	\$137,900
Los Angeles	\$115,571,200	\$38,523,700
Madera	\$2,318,200	\$772,700
Marin	\$2,151,000	\$717,000
Mariposa	\$230,100	\$76,700
Mendocino	\$1,292,300	\$430,800
Merced	\$2,615,400	\$871,800
Modoc	\$124,400	\$41,500
Mono	\$189,000	\$63,000
Monterey	\$4,615,100	\$1,538,400
Napa	\$1,827,900	\$609,300
Nevada	\$1,387,000	\$462,300
Orange	\$33,158,300	\$11,052,800
Placer	\$2,383,900	\$794,600
Plumas	\$251,200	\$83,700
Riverside	\$19,077,100	\$6,359,000
Sacramento	\$12,340,100	\$4,113,400
San Benito	\$878,600	\$292,900
San Bernardino	\$20,178,200	\$6,726,100
San Diego	\$33,083,900	\$11,028,000
San Francisco	\$7,714,400	\$2,571,500
San Joaquin	\$6,339,500	\$2,113,200
San Luis Obispo	\$2,583,400	\$861,100
San Mateo	\$6,762,000	\$2,254,000
Santa Barbara	\$4,577,900	\$1,526,000
Santa Clara	\$19,249,300	\$6,416,400
Santa Cruz	\$2,914,600	\$971,500
Shasta	\$2,686,000	\$895,300
Sierra	\$40,400	\$13,500
Siskiyou	\$593,600	\$197,900
Solano	\$3,868,400	\$1,289,500
Sonoma	\$4,555,500	\$1,518,500
Stanislaus	\$4,807,800	\$1,602,600
Sutter/Yuba	\$2,365,900	\$788,600
Tehama	\$860,500	\$286,800
Trinity	\$173,300	\$57,800
Tulare	\$4,494,400	\$1,498,100
Tuolumne	\$797,700	\$265,900
Ventura	\$8,206,400	\$2,735,500
Yolo	\$3,014,300	\$1,004,800
City of Berkeley	\$1,258,600	\$419,500
Tri-City	\$2,389,400	\$796,500
Total	\$400,000,000	\$133,333,700

Bay Area Housing Plan
Project Schedule as of 9.5.07

No.	CalHFA Contributor	RC	Home Type	Tax Status	4.2 Ebbopel	Close of Escrow	Pre-Hard Cost Submittal	Construction Start	Construction Finish	Stabilization	Loan Purchase Price	Withdraw Line Closing
PERMANENT CALHFA Line of Credit												
1	2830 Medina, San Bruno	GGRC	962-4	Taxable	\$ 1,702,000	3/30/07	na	na	na	4/30/07	\$ 1,881,564.06	8/30/07
2	10538 N. Foothill Cupertino	SARC	FTH	Tax-Exempt	\$ 1,417,000	4/30/07	na	na	na	5/18/07	\$ 1,506,541.57	8/29/07
3	10096 N. Foothill Cupertino	SARC	FTH	Tax-Exempt	\$ 1,436,000	4/30/07	na	na	na	5/18/07	\$ 1,524,286.74	8/29/07
4	10516 N. Foothill Cupertino	SARC	FTH	Tax-Exempt	\$ 1,432,000	4/30/07	na	na	na	5/18/07	\$ 1,521,141.51	8/29/07
5	10028 N. Foothill Cupertino	SARC	FTH	Tax-Exempt	\$ 1,435,000	4/30/07	na	na	na	5/18/07	\$ 1,524,156.79	8/29/07
CONSTRUCTION Bank of America Line of Credit												
6	625 & 627 Vasconia, Los Gatos	SARC	FTH	Tax-Exempt	\$ 1,806,000	7/26/06	4/5/07	6/13/07	9/19/07	10/30/07	bd	10/10/07
7	629 & 631 Vasconia, Los Gatos	SARC	FTH	Tax-Exempt	\$ 1,819,000	7/26/06	4/5/07	6/13/07	9/19/07	10/30/07	bd	10/10/07
8	637 & 639 Vasconia, Los Gatos	SARC	FTH	Tax-Exempt	\$ 1,803,000	7/26/06	4/5/07	6/13/07	9/19/07	10/30/07	bd	10/10/07
9	1330 Hayward, San Jose	SARC	9625-R	Tax-Exempt	\$ 2,008,000	7/6/06	2/22/07	12/20/07	9/22/07	10/6/07	bd	10/13/07
10	32724 Farnham Street, Union City	RCBE	SRH3	Tax-Exempt	\$ 1,499,000	11/22/06	6/30/07	8/27/07	9/24/07	10/8/07	bd	10/15/07
11	2334 Oak Park Road, San Jose	SARC	SRH3	Taxable	\$ 1,697,000	10/24/06	6/13/07	7/10/07	9/30/07	10/14/07	bd	10/21/07
12	2518 Regent Road, Livermore	RCBE	9625-R	Taxable	\$ 1,756,000	9/25/06	5/13/07	7/12/07	10/20/07	10/16/07	bd	10/23/07
13	1529 Eden, San Jose	SARC	FTH	Tax-Exempt	\$ 1,821,000	6/24/06	2/16/07	12/20/07	10/10/07	10/24/07	bd	10/31/07
14	506 & 508 Northlake Dr., San Jose	SARC	FTH	Tax-Exempt	\$ 1,857,000	7/24/06	2/16/07	12/20/07	10/10/07	10/24/07	bd	10/31/07
15	5508 Jefferson, Castro Valley	RCBE	SRH4	Tax-Exempt	\$ 1,694,000	7/26/06	5/9/07	7/12/07	10/16/07	10/30/07	bd	11/6/07
16	740 Palm Ave, S.F.	GGRC	SRH3	Taxable	\$ 1,720,000	10/30/06	6/21/07	8/6/07	10/20/07	11/4/07	bd	11/10/07
17	1112 Sunnyside Drive, S.F.	GGRC	SRH3	Taxable	\$ 1,666,000	11/6/06	6/20/07	8/6/07	10/27/07	11/10/07	bd	11/17/07
18	6531 Vanessa, San Mateo	GGRC	SRH3	Taxable	\$ 1,882,000	10/11/06	6/15/07	7/9/07	11/9/07	11/17/07	bd	11/24/07
19	1720 Pierce St., San Mateo	GGRC	SRH3	Taxable	\$ 1,660,000	6/18/06	6/28/07	8/13/07	11/9/07	11/17/07	bd	11/24/07
20	6801 Edna, San Mateo	GGRC	9624-R	Taxable	\$ 1,914,000	6/16/06	6/28/07	8/13/07	11/9/07	11/17/07	bd	11/24/07
21	32714 Olympic Court, Union City	RCBE	9625-R	Tax-Exempt	\$ 1,713,000	10/22/06	7/18/07	8/23/07	11/6/07	11/20/07	bd	11/27/07
22	2654 Olympic Way, Livermore	RCBE	962-5	Taxable	\$ 1,809,000	9/15/06	5/9/07	8/31/07	11/14/07	11/28/07	bd	12/5/07
23	21765 Shonyang Rd, Castro Valley	RCBE	SRH3	Tax-Exempt	\$ 1,502,000	10/3/06	7/17/07	8/29/07	11/18/07	12/2/07	bd	12/9/07
24	1189 Saint Beach Plaza, Alameda	RCBE	SRH3	Tax-Exempt	\$ 1,576,000	10/17/06	7/18/07	8/4/07	11/18/07	12/2/07	bd	12/9/07
25	2481 S. Patricia Court, Hayward	RCBE	SRH3	Taxable	\$ 1,554,000	11/22/06	8/17/07	9/13/07	11/27/07	12/11/07	bd	12/18/07
26	2271 Pralgo, San Mateo	GGRC	SRH3	Taxable	\$ 1,689,000	7/10/06	7/18/07	10/5/07	12/19/07	1/2/08	bd	1/8/08
27	4885 Wellington Park, San Jose	SARC	SRH3	Taxable	\$ 1,595,000	10/2/06	9/19/07	10/10/07	12/24/07	1/7/08	bd	1/14/08
28	3902 Marin, San Mateo	GGRC	SRH3	Taxable	\$ 1,446,000	4/16/07	10/25/07	11/15/07	1/29/08	2/12/08	bd	2/26/08
29	6522 Theof Place, Newark	RCBE	SRH3	Taxable	\$ 1,450,000	4/16/07	11/20/07	11/23/07	2/6/08	2/20/08	bd	3/6/08
30	275 W. Dunn, Morgan Hill	SARC	SRH4	Taxable	\$ 1,480,000	4/16/07	11/30/07	11/23/07	2/7/08	2/21/08	bd	3/6/08
31	1948 Olds Drive, Alameda	RCBE	SRH3	Tax-Exempt	\$ 1,446,000	3/20/07	11/8/07	11/29/07	2/12/08	2/26/08	bd	3/11/08
32	1446 Flora, San Jose	SARC	9625-N	Taxable	\$ 2,071,000	10/21/06	12/1/07	12/22/07	3/5/108	4/14/08	bd	4/21/08
33	14289 Milliken, Los Gatos	SARC	9625-N	Taxable	\$ 2,096,000	10/9/06	1/10/8	1/22/08	5/1/08	6/15/08	bd	6/22/08

ACQUISITION Bridge Financing												
No.	CalHFA Contributor	RC	Home Type	Tax Status	4.2 Ebbopel	Close of Escrow	Pre-Hard Cost Submittal	Construction Start	Construction Finish	Stabilization	Loan Purchase Price	Withdraw Line Closing
34	5486 Yale Drive	SARC	SRH4	Tax-Exempt	\$ 1,490,000	12/15/06	9/10/07	10/1/07	12/15/07	1/22/08	bd	1/12/08
35	1502 Concession, Way	SARC	SRH4	Taxable	\$ 1,480,000	2/15/07	9/10/07	10/1/07	12/15/07	1/22/08	bd	1/12/08
36	15470 La Alameda, Morgan Hill	SARC	962-5	Tax-Exempt	\$ 1,955,000	1/9/07	9/15/07	10/6/07	12/20/07	1/3/08	bd	1/17/08
37	15134 Cherriman Ave.	SARC	SRH4	Tax-Exempt	\$ 1,490,000	1/18/07	9/15/07	10/6/07	12/20/07	1/3/08	bd	1/17/08
38	208 Ganger, Morgan Hill	SARC	SRH4	Tax-Exempt	\$ 1,490,000	5/30/07	na	na	na	8/20/07	bd	10/15/07
39	19175 Taylor, Morgan Hill	SARC	962-5	Tax-Exempt	\$ 1,700,000	5/30/07	na	na	na	8/20/07	bd	10/15/07
40	1616 Corte de Madona, San Jose	SARC	SRH-4	Taxable	\$ 1,490,000	7/19/07	na	na	na	1/11/08	bd	2/8/08
41	838 Colma, San Jose	SARC	962-5	Tax-Exempt	\$ 1,935,000	4/28/07	10/25/07	11/15/07	1/29/08	2/12/08	bd	2/26/08
42	443 Sequoia, Redwood City	GGRC	SRH-3	Taxable	\$ 1,935,000	8/23/07	11/1/07	11/22/07	2/5/08	3/4/08	bd	3/4/08
43	460 Bonita, Foster City	GGRC	SRH-3	TBD	\$ 1,450,000	8/23/07	11/1/07	11/26/07	2/5/08	3/4/08	bd	3/4/08
44	2377 Peninsula Creek, San Jose	SARC	SRH3	Tax-Exempt	\$ 1,450,000	5/25/07	11/9/07	11/24/07	2/7/08	2/21/08	bd	3/6/08
45	1447 Stonelodge, Pleasant Hill	RCBE	SRH3	Tax-Exempt	\$ 1,450,000	5/15/07	11/8/07	11/29/07	2/12/08	2/26/08	bd	3/11/08
46	35743 Montego, Fremont	RCBE	962-5	Tax-Exempt	\$ 1,810,000	9/27/07	12/6/07	12/27/07	3/11/08	3/25/08	bd	4/6/08
47	35849 Camelon, Fremont	RCBE	962-4	Tax-Exempt	\$ 1,810,000	10/2/07	12/9/07	12/29/07	3/13/08	3/27/08	bd	4/10/08
48	6722 Diablotia Plaza, Newark	RCBE	SRH-3	Tax-Exempt	\$ 1,450,000	10/7/07	12/9/07	12/28/07	3/13/08	3/27/08	bd	4/10/08
49	1213 Salama Court, Redwood City	GGRC	SRH-3	Taxable	\$ 1,450,000	6/14/07	12/9/07	12/30/07	3/13/08	3/28/08	bd	4/11/08
50	865-665 Vasquez Court, Los Gatos	SARC	FTH	Tax-Exempt	\$ 1,710,000	10/20/07	12/11/07	1/1/08	3/16/08	3/30/08	bd	4/13/08
51	373 S. Henry Avenue, San Jose	SARC	962-N	Tax-Exempt	\$ 1,935,000	8/28/07	12/15/07	1/5/08	3/20/08	4/17/08	bd	4/17/08
52	1750 Westmont, Campbell	SARC	9625-N	Tax-Exempt	\$ 1,935,000	6/13/07	11/23/07	12/14/07	3/23/08	4/6/08	bd	4/20/08
53	9101 Woodside/Ark, Newark	RCBE	962-5	Tax-Exempt	\$ 1,810,000	7/5/07	12/21/07	1/17/08	3/26/08	4/9/08	bd	4/23/08
54	441 N. Milton, Campbell	SARC	9625-N	Tax-Exempt	\$ 1,935,000	5/25/07	12/3/08	1/24/08	4/12/08	4/22/08	bd	5/6/08
55	648 Energy Way, San Jose	SARC	9625-N	Tax-Exempt	\$ 1,935,000	2/15/07	12/3/08	1/24/08	4/12/08	4/22/08	bd	5/6/08
56	1173 Salamo, Campbell	SARC	962-N	Tax-Exempt	\$ 1,935,000	6/29/07	12/3/08	1/24/08	4/12/08	4/22/08	bd	5/6/08
57	1415 Gordon, Redwood City	GGRC	9625-N	Taxable	\$ 1,935,000	7/10/07	12/3/08	1/24/08	4/12/08	4/22/08	bd	5/6/08
58	960 Elm Street, San Jose	SARC	SRH-4	Tax-Exempt	\$ 1,490,000	7/12/07	12/3/08	1/24/08	4/12/08	4/22/08	bd	5/6/08
59	Pleasantville	SARC	SRH-4	TBD	\$ 1,490,000	11/1/07	1/10/08	1/31/08	4/15/08	4/29/08	bd	5/13/08
60	Pleasantville	GGRC	962-5	TBD	\$ 1,935,000	11/1/07	1/10/08	1/31/08	4/15/08	4/29/08	bd	5/13/08
61	1771 Jill Avenue, Santa Clara	SARC	962-N	Tax-Exempt	\$ 1,935,000	6/29/07	1/10/08	1/31/08	5/10/08	5/24/08	bd	6/7/08
62	1773 Westgate, San Jose	SARC	962-N	Tax-Exempt	\$ 1,935,000	6/29/07	1/10/08	1/31/08	5/10/08	5/24/08	bd	6/7/08

SCHEDULE ASSUMPTIONS		
Key Functions		Call Date
Design/Permitting - Remodel (Slow)		95
Design/Permitting - Remodel (Medium)		80
Design/Permitting - Remodel (Fast)		70
Design - New Construction - New Priorities		80
Pre-Hard Cost Review		25
Construction - Remodel		75
Construction - New Construction (Site-Plan)		100
Construction - New Construction (Site-Plan) Stabilization		14

PERMANENT FINANCING PROJECTIONS		
Less: Equity Contribution to Existing Properties per CalHFA/CHS/RC MOU		\$ 105,457,000
Less: Estimated Lender Conservation (interest rates, tax status, construction term)		\$ 2,000,000
		\$ 101,277,083

NOTES
1. HCS goal is to move stabilized properties to a CalHFA Warehouse Line 14 days after Stabilization.
2. Permanent Financing Total expansion to be lower than 4.2 Ebbopel Total due to Lender Conservation and \$2.189 million Equity Contribution to Existing Properties.

Key Dates		
Construction Loan Agreement Maturity		3/30/2008
CLA Maturity with 6 Mo. Extension		9/30/2008
180 Days Prior to CLA Expiration		4/30/2008
Loan Purchase Expiration		9/30/2008
Proposed Agency Closure Date		6/30/2008

**Bay Area Housing Program Bonds
Certain Information Regarding the Residences**

#	City	County	Zip Code	Residence Type	Acceptance For Occupancy	Development Cost ⁽¹⁾	Agency Mortgage Amount ⁽²⁾	Agency Loan Purchase ⁽³⁾	Interest Rate ⁽⁴⁾	Loan Purchase Date	RC Equity Amount	Debt Service Reserve ⁽⁵⁾	Collateral Reserve ⁽⁶⁾	Appraised Value ⁽⁷⁾	Loan to Value
1	San Bruno	San Mateo	94066	962/Med	16-Jul-07	\$ 1,497,730.15	\$ 1,792,000.00	\$ 1,681,594.06	TBD	9-Aug-07	\$ 9,012.00	\$ 192,875.91	\$ 84,079.71	\$ 1,250,000.00	135%
2	Cupertino	Santa Clara	95014	FTH/Duplex	7-Nov-05	\$ 1,408,584.91	\$ 1,436,000.00	\$ 1,324,286.74	TBD	29-Aug-07	\$ 226,500.00	\$ 142,201.83	\$ 66,214.34	\$ 1,240,000.00	107%
3	Cupertino	Santa Clara	95014	FTH/Duplex	7-Nov-05	\$ 1,405,777.41	\$ 1,432,000.00	\$ 1,321,141.51	TBD	29-Aug-07	\$ 226,500.00	\$ 141,864.10	\$ 66,057.08	\$ 1,240,000.00	107%
4	Cupertino	Santa Clara	95014	FTH/Duplex	7-Nov-05	\$ 1,408,468.88	\$ 1,436,000.00	\$ 1,324,156.76	TBD	29-Aug-07	\$ 226,500.00	\$ 142,187.88	\$ 66,027.84	\$ 1,240,000.00	107%
5	Cupertino	Santa Clara	95014	FTH/Duplex	7-Nov-05	\$ 1,392,745.21	\$ 1,417,000.00	\$ 1,306,541.57	TBD	29-Aug-07	\$ 226,500.00	\$ 140,296.36	\$ 65,327.08	\$ 1,240,000.00	105%
						\$ 7,113,306.57	\$ 7,513,000.00	\$ 6,957,720.64			\$ 915,012.00	\$ 759,426.07	\$ 347,706.05	\$ 6,210,000.00	

(1) Development Cost - Equity + Debt Service Reserve = Note Purchase Amount

(2) Bank of America Note Amount

(3) Note Purchase Amount

(4) Interest rate/line of credit = LIBOR + 180 bps, Permanent interest rate = cost of funds + 150 bps

(5) Debt Service Reserve is financed and equals one year debt service

(6) Collateral Reserve is not financed and equals 5% of the Agency Loan Purchase Amount

(7) Appraised Value at completion of Rehabilitation/Construction