

San Francisco Mayor's Office of Housing and Community Development
Department of Homelessness and Supportive Housing
Office of Community Investment and Infrastructure
Controller's Office of Public Finance

MEMORANDUM

DATE: October 28, 2022
TO: CITYWIDE AFFORDABLE HOUSING LOAN COMMITTEE
FROM: WILLIAM WILCOX, BOND PROGRAM MANAGER
RE: **Update to Multifamily Securities Program Manual**

I. Executive Summary

The Multifamily Securities Program (“MSP”) Manual (the “Manual”) attached as **(EXHIBIT A)**, was originally approved by the San Francisco Citywide Affordable Housing Loan Committee in 2018 and has not been revised since. MOHCD Staff is recommending the Committee approve the proposed revisions **(EXHIBIT B)** to the Manual which seek to make program updates to improve and streamline our bond issuance processes. A redlined copy showing the changes that have been made is also attached **(EXHIBIT C)**

The updates to these guidelines will accomplish a few key goals:

- a. Adjust fee structure to maximize tax credit equity pricing
- b. Conform to changes in the CDLAC and CDIAC Regulations
- c. Align with most recent guidance from the IRS
- d. Address existing process challenges and reduce timeline
- e. Better regulate bond transfers
- f. Prioritize 100% affordable projects in competitive rounds
- g. Clarify existing legal language throughout the documents based on advice from outside counsel

II. Background

- a. Program History

The Manual governs the process and rules for San Francisco’s conduit issuance of tax-exempt bonds. Tax-exempt bonds and 4% Low Income Housing Tax Credits are used to fund 95% of San Francisco’s new construction affordable housing and as part of that process the City serves as the issuer for the bonds. The Manual explains our bond issuance process, sets fee levels, and regulates our bond program. The Manual was created in 2018 in response to a requirement by the California Debt Limit Allocation Committee (CDLAC), which oversees allocation of volume cap private activity tax-exempt bonds.

b. Reform Goals

In the intervening years since the Manual was originally approved there have been substantive and minor changes at various governing bodies that regulate conduit tax-exempt bond issuance including the Internal Revenue Service (IRS), CDLAC and the California Debt and Investment Advisory Commission (CDIAC). These updates to the manual adjust for these changes while also making internal process improvements to reflect lessons learned and policy changes to improve future issuances. The overall goals of these updates will be to:

- Resolve related party issues and increase tax credit equity by 5-10 cents per credit (\$2-\$8 million per project, depending on size)
- Save time for developers, attorneys, and other transaction staff by resolving process issues and aligning with other regulations
- Avoid confusion and save time with clear rules when bonds are transferred
- Improve competitiveness of projects at CDLAC by adjusting queue of applicants

By making these improvements to the Manual, MOHCD will be able to more efficiently issue debt and increase tax credit equity investments in affordable housing projects in San Francisco.

III. Governing Documents, Policy, and Regulations

Select Reformed Program terms are below. Please refer to the attached updated Manual (**EXHIBIT B**) or the redlined copy showing all changes (**EXHIBIT C**) to see the exact language changes.

Detailed Changes to Manual

1. Section 1.8: Waivers:
 - a. Formally acknowledged ability of Director to provide a waiver to any rules in the manual in circumstances where it would further MOHCD's overall policy goal. This has been the case in practice but this section formalizes this approval process.
2. Section 2: Defined Terms and Acronyms
 - a. Removed references to Adtech and Daily Journal to reflect that we no longer need to publish TEFRA notices outside of the MOHCD website
 - b. Clarified definition of Annual Monitoring Fee During Construction per request from Municipal Advisor and Bond Counsel. On projects without MOHCD gap, MOHCD charges the first year of issuer fee at 12.5 basis points based on the total issuance, not the outstanding bond amount, which is what the ongoing issuer fee is calculated at after year one.
 - c. Slight edit to Mixed Income Project definition to align with newer CDLAC naming conventions in their 2022 regulations update.
3. Section 3: Securities Issuance

- a. Clarification that the lowest applicable rent standards between the City, TCAC and Inclusionary programs will apply.
4. Section 3.1.3 D: Private Placements and Direct Loan Requirements:
 - i. Increasing the minimum denomination for bonds to be sold at from \$100,000 to \$250,000. At the advice of bond counsel and financial advisors MOHCD is increasing the minimum denomination to further avoid non-complex investors from acquiring tax-exempt bonds from our affordable housing developments because that would risk increased legal challenges.
 - ii. The regulations clarify that transfers are restricted to either Qualified Institutional Buyers or Accredited Investors who sign an Investor Letter. These are two separate groups, and it is not necessary for a QIB to sign an Investor Letter. This was the initial intent, and a small language and formatting change clarifies this.
5. 3.1.5 A: Affordability Restrictions: The regulations add a note that all 100% affordable projects should select 40% of units at 60% of Area Median Income due to cliff event issues with 20% at 50% of Area Median Income.
6. Section 3.1.6
 - a. Relocation: This update adds that if tenants must be relocated for a period of one year as part of a rehabilitation in connection with a bond issuance, then sponsors must provide temporary relocation benefits, as defined by state law.
 - b. Accessibility: Projects are required to have 10% of units equipped for mobility accessibility and 4% as communication units. These two unit types cannot overlap.
7. Section 3.1.8: Sizing of the Issuance
 - a. Noted opportunity to issue recycled bonds, which has been in place since 2021.
8. Section 3.1.10: Program Costs of Issuance
 - a. TEFRA notices no longer need to be published besides on the MOHCD website. So there are no longer TEFRA notice costs and this section has been removed.
 - b. CDLAC performance deposits no longer need to be submitted at application. The regulations update to comply with CDLAC's new regulations that only require performance deposits to be submitted after projects receive an allocation.
 - c. The CDLAC issuance fee was updated to 2.5 basis points per their most updated fee schedule.
 - d. The update clarifies that the \$6,500 deposit to the Municipal Advisor is due no later than the date the CDLAC application is submitted.
 - e. References to a bond counsel retainer are removed since bond counsel no longer accepts these fees.
 - f. City Attorney Office bond counsel fees must be billed at least one week before the settlement statement needs to be finalized. These invoices should be sent to the City Attorney assisting with the bond documents. This new process reduces late billing by the City Attorney's Office.
 - g. Issuance Fees:

- i. Projects that have a MOHCD gap loan there will no longer be an initial issuance fee. Projects without a MOHCD gap loan will still be subject to a 25 basis point initial issuer fee.
 - ii. Related Party Structured Projects: For projects without a MOHCD gap loan that have the same tax credit investor and lender, there are two options to address 1/8th rule concerns: 1) use a cash collateralized public sale structure; 2) if using a syndicator, the upper tier related party investor can relinquish 51% of its equity position during construction.
 - iii. Annual Issuer Fee:
 - 1. Projects with a MOHCD gap loan will pay 12.5 basis points in annual issuer based on the average amount of bonds outstanding in a given year starting on first anniversary of the bond issuance. After the bonds have been retired the fee will revert to the Minimum Annual Monitoring Fee of \$2,500 for the duration of the 55 year regulatory period.
 - a. As necessary first year payments may be slightly reduced to meet any limitations set by the rebate analyst or bond counsel depending on characterization of some fees, not generally included in the issuer fee calculation.
 - 2. Projects without a MOHCD gap loan will continue to pay an issuance fee during construction of 12.5 basis points of the full issuance amount in the first year. Thereafter the annual monitoring fee is 12.5 basis points of the highest outstanding par amount in the previous twelve months or the Minimum Annual Monitoring fee of \$2,500.
9. Section 3.1.13 Issuance by Outside Issuers
- a. Projects may only proceed with issuance by CalHFA in coordination with MOHCD if issuance by CalHFA is a requirement for a funding source.
 - b. In order to maximize the value of tax-exempt bonds when they are being competitively allocated, MOHCD shall have the authority to ask independent projects without MOHCD gap loans to wait up to one CDLAC round to apply.
 - i. This will only apply if the total bond request by all MOHCD funded projects in a given round will be 50% or more of the Bay Area geographic region's allocation for that round.
 - ii. Projects with existing Development Agreement's as of the publication of this update will be exempt from this limitation.
10. Section 3.2.1 Timelines and Planning
- a. Board Packet: BOS Introduction letter and Form SFEC have both been removed since they are no longer required.
 - b. The board packet must be submitted by close of business Thursday in advance of introduction the following week, per latest instructions from the Clerk.
11. Section 3.2.4 TEFRA Notice and Inducement Process
- a. TEFRA notices can now be published solely on the MOHCD website and not in an outside publication. Sections referring to publishing in an outside publication were removed accordingly and the new publishing location is listed.

- b. The amount to TEFRA for was updated to reflect the need to include a cushion, including some nuance for scattered sites.
 - c. Per updated IRS guidance TEFRA hearings may be conducted telephonically now. The manual is updated to reflect this practice.
 - d. Introduction letters for TEFRA Resolutions are no longer required by the Board of Supervisors so references to this requirement have been removed.
 - e. Given the increased use of taxable tails, the manual now notes that one TEFRA and Inducement Resolution will be used for both taxable and tax-exempt issuances.
 - f. On advice from bond counsel, inducement can be approved directly by the Mayor to speed up the overall process due to competitive nature of CDLAC at this time.
12. Section 3.2.5 CDLAC Application and Allocation
- a. The manual has been changed to reflect that the CDLAC performance deposit is now not required until after the Allocation Date, instead of the application date, when it was previously required.
 - b. The manual is updated to comply with CDLAC's current requirement that TEFRA only occur by the closing date and that TCAC no longer required the Local Reviewing Agency Confirmation Letter.
13. Section 3.2.6 D: City Closing Documents
- a. Noting that the developer fee agreement is included in the city loan documents as applicable.
14. Section 4.3.2: Compliance
- a. The CDIA reporting deadline was added to the list of deadlines.
15. Exhibit E: Mandatory Contracting Provisions
- a. The contracting provisions have been updated to the current city contracting rules.
16. Exhibit F: Operational Rules for San Francisco Housing Lotteries and Rental Lease Up Activities
- a. The manual now directs readers to a link for the full lottery preferences manual instead of including a portion of the information in the manual itself.

EXHIBIT A: Currently approved 2018 Multifamily Securities Program Manual

EXHIBIT B: Updated 2022 Multifamily Securities Program Manual for approval

EXHIBIT C: Redlined copy showing changes made to 2018 Manual

4. STAFF RECOMMENDATIONS

MOHCD staff recommends approval of the 2022 Multifamily Securities Program Manual (attached as EXHIBIT B).

5. LOAN COMMITTEE MODIFICATIONS

LOAN COMMITTEE RECOMMENDATION

Approval indicates approval with modifications, when so determined by the Committee.

APPROVE. DISAPPROVE. TAKE NO ACTION.

Eric D. Shaw, Director
Mayor's Office of Housing and Community Development

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Thor Kaslofsky, Executive Director
Office of Community Investment and Infrastructure

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Salvador Menjivar, Housing Director
Department of Homeless and Supportive Housing

Date: _____

APPROVE. DISAPPROVE. TAKE NO ACTION.

Anna Van Degna, Director
Controller's Office of Public Finance

Date: _____

Attachments: EXHIBIT A– Currently approved 2018 Multifamily Securities Program Manual
 EXHIBIT B– Updated 2022 Multifamily Securities Program Manual
 EXHIBIT C– Redlined copy showing changes made to 2018 Manual

Chavez, Rosanna (MYR)

From: Shaw, Eric (MYR)
Sent: Friday, October 28, 2022 11:38 AM
To: Chavez, Rosanna (MYR)
Subject: Request for approval for update to Multi-family securities program

Approved

Eric D. Shaw
Director/ Interim Director HopeSF

Mayor's Office of Housing and Community Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor

Chavez, Rosanna (MYR)

From: Obstfeld, Kimberly (CII)
Sent: Friday, October 28, 2022 11:40 AM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR); Colomello, Elizabeth (CII)
Subject: Request for approval for update to Multifamily Securities Program Manual

On behalf of OCII, I approve the request for approval for update to Multifamily Securities Program Manual as presented to the Citywide Affordable Housing Loan Committee today.

Thanks!



Kim Obstfeld
Senior Development Specialist

📍 One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

📞 cell 510.907.0157

🏠 www.sfocii.org

Chavez, Rosanna (MYR)

From: Menjivar, Salvador (HOM)
Sent: Wednesday, November 2, 2022 9:50 PM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR)
Subject: Multi-family securities program 10/28/22 Loan Committee

I approve the revisions to the securities manual to improve and streamline the bond issuance processes.

Best,

salvador

From: Chavez, Rosanna (MYR) <rosanna.chavez@sfgov.org>
Sent: Wednesday, November 2, 2022 1:33 PM
To: Menjivar, Salvador (HOM) <salvador.menjivar1@sfgov.org>
Subject: Request for approval for update to Multi-family securities program 10/28/22 Loan Committee

Hi Salvador,

If you could please provide your vote for Request for approval for update to Multi-family securities program, from last week's Loan committee.

Thank you,

Rosie Chavez

Asset Manager
Mayor's Office of Housing and Community Development
1 South Van Ness, 5th Floor, San Francisco, CA 94103
(628) 652-5810

Chavez, Rosanna (MYR)

From: Van Degna, Anna (CON)
Sent: Friday, October 28, 2022 11:37 AM
To: Chavez, Rosanna (MYR)
Cc: Shaw, Eric (MYR)
Subject: Request for approval for update to Multi-family securities program

approved

Anna Van Degna (*she/her/hers*)

Director, Controller's Office of Public Finance

City & County of San Francisco

1 Dr. Carlton B. Goodlett Place

City Hall, Room 338*

San Francisco, CA 94102

Phone: (415) 554-5956

Email: anna.vandegna@sfgov.org

**Please note our new Office #*