

**Draft Inclusionary Affordable Housing Monitoring and Procedures Manual**  
**Public Comments and MOHCD's Response**  
**July 3, 2024**

**1. Public Comment:**

I can certainly understand the challenges of creating a program of this size, but it is overly complex and cumbersome to both applicants and housing providers. My comments are less on the manual which is over 100 pages in length and more on the overall process. One suggestion for improvement would be to pre-qualify all applicants before they are allowed in to the lottery system and that approval should be good for at least 12 months. In the current system, applicants are likely entering multiple lotteries to improve their chances of securing a new home, which means housing providers are likely making multiple document requests to the same applicants. It's a lot of work for both parties and to think multiple providers are having to make the same requests to the same applicants seems unnecessary. Housing providers should simply get a list and know that the applicants on the list are move-in ready. If the applicant passes on the unit, the housing provider goes to the next person on the list. It makes no sense to let someone in a lottery for a building they are not qualified to live in and putting both the applicant and the housing provider through all that administrative work slows the process down. Our shared goal should be to get people in need of housing in housing as soon as possible. Pre-qualifying applicants for at least 12 months before they enter the lottery would be a positive step towards this shared goal. Thank you!

**MOHCD Response:**

Pre-qualifying all applicants prior to the lottery is a process that has been previously applied and intentionally discontinued due to public feedback and analysis of its impact both on applicants and project sponsors. Requiring applicants to be pre-qualified imposes barriers and limits access to affordable housing opportunities, especially for our most vulnerable populations. Documenting applicant income, without providing a real opportunity for housing, not only discourages applicants from applying and having a chance with the lottery, but it also significantly increases the project sponsor's requirements to receive, review, and process applications.

A central goal of the City's Housing Element is to reduce barriers to affordable housing for vulnerable populations. While MOHCD will not return to pre-qualifying applicants, the proposed Draft Manual includes a new process that will allow project sponsors to accept income eligibility status from applicants whose income has previously been determined at other development projects, instead of re-calculating income again. With this new process, applicants can carry their approved application from one building to another. This expedites the review process for project sponsors and minimizes the application requirements for applicants. MOHCD is currently piloting a program among applicants with the Certificate of Preference (COP) and Displaced Tenant Housing Preference (DTHP) preferences to allow those applicants to carry their approved application from one building to another.

**2. Public Comment:**

Landlords not approving low credit scores.

**MOHCD Response:**

Through research and data analysis, MOHCD has confirmed that requiring a credit score is not a significant barrier to affordable housing. For example, in the 2022-23 fiscal year, 21,613 complete housing applications were received by project sponsors for 380 BMR units. Only two households were denied for having low credit scores. Both applicants appealed the denial, and one of the two denials was overturned through the appeal process. Therefore, only one applicant out of 21,613 reviewed applications was disqualified due to a low credit score.

**3. Public Comment:**

I would like to know in regards of Parking for a low income disable what are the options for free parking at BMR rental property. it will be helpful to have more details and/or information for disable low-income renters.

**MOHCD Response:**

San Francisco is a Transit-First government agency that requires all departments to implement policies and principles, such as encouraging travel by public transit and alternative means of transportation. The number of required parking spaces for residential projects, including parking for disabled people, is outlined in the Planning Code. The number of parking spaces is determined during the project approval process, often by the Planning Department or Planning Commission. Per the Procedures Manual, the number of parking spaces for the BMR units is determined based on a ratio of the total number of units and total number of parking spaces provided in that building. The parking spaces provided in affordable housing are offered in lottery rank order to qualified applicants. While there may be parking for disabled residents available on-site, all tenants must work directly with the building owner to acquire such parking and negotiate a rate for disabled parking.

**4. Public Comment:**

There are a handful of agents in San Francisco who understand, and are willing to take the time to learn, the myriad rules associated with the BMR program. In my experience, it can take years for a qualified buyer to win the BMR lottery. After a lengthy period of time working together, it's unfair to require a buyer to use an unknown agent due to a perceived conflict of interest. Additionally, there are not many brokerages left in the San Francisco. It's entirely possible that agents belonging to the same brokerage may not be familiar with another agent of the same brokerage. That said, I don't understand the objection to working with different agents who happen to work for the same brokerage. The rule does not protect the buyer who, after winning the lottery, is required to find another random agent from a different brokerage in a short

amount of time. The new agent may, or may not, be familiar with the many nuances of the BMR program. They are almost certainly unfamiliar to the buyer. I support the MOHCD amending this rule in order to be fair to the BMR buyer, and the agent representing them.

**MOHCD Response:**

Dual agency is allowed with MOHCD prior approval. This policy was implemented in response to consistent BMR buyer feedback MOHCD has received (since the 2018 Inclusionary Manual was published) regarding the lack of adequate representation for buyers, especially in cases where either the same realtor represents both buyer and seller, and/or when referrals occur within the same brokerage firm.

Each year, dozens of buyers indicate that they feel pressured to utilize an agent referred by the seller’s agent, resulting in minimal support. MOHCD has documented these cases and can confirm that issues arise for buyers without adequate representation from a buyer’s agent. To ensure proper representation of buyers, MOHCD established a policy against dual agency. However, we have been and will continue to consider granting waivers, for example when the buyer requests representation from an agent within the same brokerage. In cases of referrals from the seller’s agent, if the referred buyer’s agent can demonstrate their efforts in assisting the buyer prior to the referral, and the buyer agrees, MOHCD has been and will continue to be flexible in granting waivers when necessary.

Since implementing the dual agency policy in 2023, in contrast to the prior 4 years, MOHCD has not received any negative feedback from buyers regarding representation by agents who are unfamiliar, nonresponsive, or not acting in their best interest.

While available units have been scarce in other markets, despite an increase in mortgage interest rates, the current market is strong for first time home buyers purchasing BMRs. Interested buyers can apply for multiple units right away, eliminating the lengthy wait associated with lottery applications.

**5. Public Comment:**

Can you get rid of dual agency and the affordability price.

**MOHCD Response:**

See #4 response above regarding the dual agency question.

Regarding the affordable price question, it is the intent of Planning Code to provide ownership opportunities for households to be priced at the affordability levels that match the maximum allowable household income for the BMR unit. This is known as the “affordable price”. Some sellers may be eligible to request a price above the affordable price, known as the “maximum

allowable sales price". Because it is vital for first-time homebuyers to understand their affordability level when purchasing a home to be able to make informed decisions about the purchase, sellers must disclose that their maximum allowable asking price does not match the maximum allowable household income for the BMR and may be unaffordable for new buyer.

While MOHCD cannot remove the affordable price, to address the gap between the maximum allowable sales price and the affordable price, the resale price formula in the Draft Manual ensures that the resale price cannot exceed the affordable price. There will no longer be a need for an affordable price disclosure for the units regulated under the Draft Manual. Previous resale formulas did not account for this gap between the maximum allowable sales price and the affordable price.

**6. Public Comment:**

- 1) Is there an option to recalculate the renter's rent amount based on the renter's new income range? example: renter qualified under 55% AMI income range for the 1st rental year. the following year, the renter's income range increased into the 56% range and the rent was also increased based on the updated rental chart at 55% AMI. after that, during the middle of the rental year, the renter was laid off and had to get a new job, which makes less and is in the 45% AMI range, but the rent was still increased based on the rental chart at 55% AMI. is the renter, who's income is in the 45% AMI range, required to keep paying rent at the 55% AMI range?
- 2) Are BMR renter's legally required to sign a new lease every year? the draft manual states the 12-month lease automatically becomes a month-to-month lease after the 1st year. if a renter decides not to sign a new lease, will this result in an eviction? can the renter refuse to sign a new lease? if it is a month-to-month lease, are renter's still required to follow the same recertification rule? will the monthly rent be calculated differently? will there be other fees or is that not permitted? example: month-to-month rent is normally higher than the monthly rent tied to a lease. would this also apply to bmr rentals?
- 3) There were no month-to-month rules, regulations or fee/rent structures/charts/schedules listed, does that mean there are no safe guards for renter's who fall into this category?

**MOHCD Response:**

- 1) Rent amounts are determined by Planning Code and development agreements as part of the project approval process. MOHCD does not have the authority to revise the previously approved calculation of rents. A project sponsor sets rents annually to meet the building's financial needs. Setting rents that fluctuate according to a tenant's income may cause the building to be unable to meet its financial responsibilities.
- 2) BMR Tenants are not required to sign a new lease every year. The Draft Manual provides that after the first year, the lease agreement may transfer to a month-to-month lease.

However, the recertification requirements do not change. All the rules of the BMR program still apply whether a tenant is on an annual or month-to-month lease. The same lease agreement signed at time of move-in remains in effect even when the lease agreement moves to a month-to-month agreement. A tenant's rent amount is subject to an annual rent increase, and tenants will still be required to complete an annual recertification.

- 3) The month-to-month change in the lease is meant to benefit tenants because they are protected if they need to move out mid-year and have protections by the same agreement signed during move-in.

**7. Public Comment:**

I want to rent housing

**MOHCD Response:**

We encourage you to apply to the affordable housing opportunities listed on DAHLIA San Francisco Portal <https://housing.sfgov.org/>. Housing counselors are available to assist with the application process.

**8. Public Comment**

We are providing the following comments upon receiving MOHCD's response to our April 26th letter as well as reviewing the draft Inclusionary Housing Manual. We would like to express our appreciation for our collaboration that led to the incorporation of our proposed changes in the draft. In addition, we are requesting clarification on specific matters, including preference documents, rental subsidies, time extensions to provide requested documents, language access, and communication and training of leasing staff. We recognize that some of these issues may be addressed elsewhere than the manual, but we would like to ensure these issues are addressed nonetheless in order to ensure smooth communication between MOHCD, community stakeholders and our clientele.

**Income Calculation**

Response to MOHCD's Comment about Seasonal Workers' Income Calculation: We agree with the proposed update in the Manual.

**Rental Subsidies**

We understand that a hand-out about rental subsidies will be distributed prior to disqualification to anyone under qualified based on their income. Currently, applicants going through the process on their own may be referred through Homeownership SF to a housing counselor only upon disqualification. The appeals process may not leave enough time to apply for subsidies. We propose that the handout would include contact info for rental application/subsidy agencies and/or housing counseling agencies WITH A DISCLAIMER stating that subsidies are not guaranteed. The goal is to make this information accessible, while avoiding any implication that subsidies are guaranteed.

**Extension of Time Limits for Documents**

We propose that MOHCD allow applicants who are missing government documents to initially self-attest their benefit amounts, and that the self-attestation would include an agreement to obtain the government documents in the amount of time it takes specific government agencies to mail documents.

**Unnecessary Documents**

On Explanation of Deposits: We agree with the proposed update to the manual.

On Preference Documents: Although MOHCD’s response sounds agreeable, we would like to get more clarification. It sounds as though the proposed changes would mean that in cases where someone has not correctly submitted a Live/Work preference document, they will only be asked for another one during the lease-up process, and only if the lease-up documents (taxes, bank statements, paystubs, etc.) do not match the address the applicant submitted. Is that correct? Is that also the case for applicants who had submitted documents more than 45 days old? If so, MOHCD’s suggestions seem to solve the problem we have brought to your attention. In addition, if looking at other documents for verification, will the documents only be limited to documents currently accepted as proof of Live/Work preference? In case of conflicting info (where the address on documents submitted do not all match), will additional documents be accepted to confirm preference? Thank you! Please let us know if we are misunderstanding.

**Language Access:**

While we understand the city’s position that it cannot force private entities not receiving government funds to spend money on language access, there may be cost-neutral ways that MOHCD can enforce requirements. We would also like to better understand the guidelines and best practices that MOHCD recommends for leasing agents.

Thank you for responding to our concerns and continuously working and communicating with us.

In community,

Bill Sorro Housing Program (BiSHoP)  
Council of Community Housing Organizations (CCHO)  
Mission Economic Development Agency (MEDA)  
SF LGBT Center  
South of Market Community Action Network (SOMCAN)

**MOHCD Response**

**Rental Subsidies**

Because of the limited nature of rental subsidies and very specific eligibility criteria, MOHCD will continue to work with our partners to distribute multi-lingual written information by leasing

agents filling units that match the subsidy requirements. MOHCD will continue to provide housing counselors with information about available subsidies and how to access them on a regular basis.

**Extension of Time Limits for Documents**

To simplify the leasing process, MOHCD will no longer require additional government documents if the payee and deposit amount are clearly identifiable on the applicant's submitted bank statements. This eliminates the need for self-attestation and reduces document submission time. The Inclusionary Procedures Manual has been updated to reflect this change.

**Preference Documents:**

While the specifics to lottery preference documents fall outside the scope of the updates to the Inclusionary Procedures Manual, you are correct in your description of the proposed changes to the preference document requirements.

If the lease-up documents (taxes, bank statements, paystubs, etc.) match the address the applicant submitted and the preference document they submitted was outdated, MOHCD will not require a new preference document.

A valid preference document (meaning a document that is no older than 45 days prior to submitting the lottery application) will only be requested during the leasing process when the original preference document is invalid and the lease-up documents (taxes, bank statements, paystubs, etc.) do not match the address the applicant stated on the lottery application. This streamlined approach minimizes paperwork and ensures a smooth leasing experience, provided the applicant's information is consistent.

The preference document validation process change has been incorporated in an update to the Marketing, Housing Preferences and Lottery Procedures Manual. However, the list of acceptable documents for the Neighborhood Resident Housing Preference (NRHP) and Live/Work in San Francisco preference remains unchanged. MOHCD is currently evaluating additional document types submitted by Bill Sorro Housing Program (BiSHoP), Council of Community Housing Organizations (CCHO), Mission Economic Development Agency (MEDA), SF LGBT Center, and South of Market Community Action Network (SOMCAN). Our goal in reviewing these documents is to ensure they are generally up-to-date and reflect the applicant's current address; are issued by a credible source; and have limited personal identifying information that contains very little outside of essential details such as name and address. For example, some of the suggested documents include personal medical information which carry additional information protections.

**Language Access:**

MOHCD complies with Local, State and Federal laws regarding language access and believes in fostering inclusive communication with all residents. As such, the Inclusionary Procedures Manual has been updated to include guidelines and best practices for language access. These can be found on page 66, Section VI: Project Sponsor Requirements. MOHCD welcomes specific suggestions on cost-neutral methods for enforcing language access requirements.

## **9. Public Comment**

Thank you for your efforts to streamline the BMR program. As a BMR owner who has been unable to sell my home despite changing life circumstances, I have some thoughts and clarifications I'd like to share. Please feel free to reach out if you have any questions.

- a. MANUAL (pg. 8): Regardless of size, BMR Units priced for middle-income Households at 110% of AMI for BMR Rental Units or 130% of AMI for BMR Ownership Units must consist of no fewer than two people in the Household (unless otherwise amended in the Planning Code).

RESPONSE: This reads to me that only households with two or more people can be considered middle-income. This negatively impacts studios and one-bedroom units, which typically cannot comfortably accommodate two people, which has been particularly problematic for one-bedroom units like mine that are currently not selling on the market even at 120% AMI.

- b. MANUAL (pg. 23): Due to changes to the Planning Code over time, many older BMR Ownership Units are available to Households at one income level, while other BMR Units are available to Households ranging in income. For projects governed by this Manual, the following table outlines the most common pricing and qualifying AMI levels for BMR Units.

Households earning up to 100% of AMI are eligible to apply for low-income BMR Ownership Units with an affordable purchase price set at 80% of AMI or less. Households earning from 95% to 120% of AMI are eligible to apply for moderate-income BMR Ownership Units with an affordable purchase price set at 105% of AMI or less. Households earning from 120% to 150% of AMI are eligible to apply for middle-income BMR Ownership Units with an affordable purchase price set at 130% of AMI or less.

RESPONSE: These eligibility requirements are unclear to me. It would make sense for older BMR units to have more flexible AMI ranges, yet that doesn't appear to be the case.

- c. MANUAL (pg. 31): When reselling a BMR Unit, the BMR Owner has the choice to cover all real estate commission costs, provided they do not exceed five percent (5%) of the BMR resale price. However, if the BMR Owner opts not to cover the entirety of the real estate agent commission costs, both the BMR Owner and the BMR buyer are equally responsible for these costs, which shall not exceed five percent (5%) of the BMR resale price. The BMR Owner's agent or their affiliates are prohibited from acting as the BMR buyer's agent. Both seller's and buyer's agents must comply with all applicable laws related to commissions.

RESPONSE: Since BMR resale prices are set by the city, there doesn't seem to be a conflict of interest that would prevent a realtor from representing both the buyer and the seller. In fact, it would make sense to incentivize the realtor by allowing them to earn commissions on both sides.

- d. MANUAL (pg. 38): In its sole discretion, MOHCD may grant consent to a BMR Owner to rent all or part of their BMR Unit for up to 12 months.



RESPONSE: Given the recent challenges in the BMR resale market, I hope that MOHCD will consider granting owners permission to rent units for longer than 12 months and/or allow renting if owners have been unable to sell their homes at the affordable price. Additionally, it would be helpful to clarify whether BMR units are subject to the San Francisco Rent Board's eviction policies.

**MOHCD Response**

- a. While MOHCD agrees that limiting household size for middle-income units is a burden to owners selling a BMR unit and limits access to affordable units, Planning Code regulates the occupancy rules for BMR units priced for middle-income households. MOHCD does not have the authority to change the Planning Code. Your feedback has been shared with the Planning Department.
- b. Please refer to the Ordinance No. 158-17, enacted in 2017, regarding projects that distribute BMR units between three different income tiers (low, middle, and moderate income). This ordinance revised the Inclusionary Affordable Housing Fee and Dwelling Unit Mix requirements, mandating that BMR projects with 25 or more units offer 5% of their BMR units for middle-income households. Prior to 2017, all BMR units were offered at the same AMI level.
- c. Although the maximum BMR resale price calculated by MOHCD, similar to typical real estate transactions, the actual sales price is negotiable between the seller and buyer, as long as it does not go above the maximum price allowed. While earning a larger commission is a great incentive to real estate agents, the dual agency prohibition policy was implemented to protect BMR homebuyers. It's crucial that first-time homebuyers receive proper representation and have an agent dedicated to their best interests. For more information on dual agency, please refer to MOHCD's response to Comment #4 above.
- d. BMR homeowners who are unable to sell units due to challenging market conditions can request permission to temporarily rent the unit. Lease terms are permitted for one year, with a possible extension upon the owner's request and MOHCD's approval. Inclusionary housing BMR units are regulated by MOHCD and therefore exempt from the Rent Board's eviction policies.

**10. Public Comment**

We appreciate your efforts to revise the BMR ownership manual to help units such as ours that are struggling to sell after almost 2 years and are forced to sell at a loss. Thank you for changing policy around Household Size (in Exhibit B, area B) so that units that face difficulty in selling their units can sell to smaller households (our two bedroom unit can now be sold to a 1 person household). Thank you for changing your policy with Expanding Methods for Income Calculation (Exhibit B, area C) since this helps by expanding the eligibility for BMR applicants.

The major problem we are facing is that the Affordable Resale Price is so low and it deters anyone from considering purchasing our unit at the price we are selling for. The affordable resale price is almost \$100,000 less than what we bought it for (Our Affordable Resale price is \$386,263 and we purchased our unit for \$481,000 (includes costs to realtors). The introduction of the "affordable" pricing has negatively impacted those who bought BMR units at the maximum price pre-2019. We believe that BMR units purchased before this policy change should remain eligible for DALP for future sellers at up to the maximum price. Alternatively, owners who purchased before 2019 should be allowed to sell their units to buyers with higher AMI thresholds- and we are deeply grateful you are working with Supervisor [REDACTED] to permanently raise the AMI to 150%. As we know, the Bay Area AMI is at 200%, so having the unit sell at 150% AMI is still below market rate. An increase to AMI limits makes the most sense since HOA fees increase over time due to maintenance costs as buildings age (and you told us in our meeting with you that when the HOA fees increase, the value of our unit goes down).

If you permanently upgrade our unit and similar units to 150% of AMI, it MUST update the formula for the "affordable price" to really help. Our realtor, [REDACTED] says she gets many calls from people who can afford our unit at 120% AMI, but they don't want it because they can't get the BMR DALP. Changing the formula for determining the affordable resale price will ensure that it will be higher and more people can apply for DALP. Please update the formula for the "Affordable Resale Price" to a higher price when the AMI is permanently raised to 150%. This will make it more attractive to potential buyers. In addition- to help all BMR owners trying to well- if the "affordable price" for a unit is more than 5% below the maximum allowed sale price, the AMI could be permanently adjusted up until it's within 5% of the "affordable price," to a maximum AMI of 150%

Can you re-consider the formula you use to create the affordable resale price? For our family, it has not been fair that the "affordable price" is set based on 2 humans occupying a 2 bedroom apartment. We used the income allowed for FOUR to qualify in the first place. What if the affordable price were FLEXIBLE/sliding scale like the qualifications? Can it mirror the qualification structure? So the affordable price is higher based on the number of occupants just like the allowed income? This would significantly help us and others in our situation.

We ask that you integrate the policy change to a higher AMI for units like ours with an adjusted higher Affordable Resale Price into your Manual immediately after the legislation from Supervisor [REDACTED] passes and not wait until the next revision of your Manual years from now. We are struggling everyday in our unit - we want to live closer to my aging parents and take better care for our children in a safer neighborhood. We need to move - which can only happen with your help. Thank you.

Our ultimate goal is for your BMR ownership program to progress to market rate units over time. This is how BMR units in other cities, as well as San Francisco's BMR rentals evolve and manage the challenges that are faced with selling older units with high HOAs in a below market rate program.

Thank you.

**MOHCD Response**

MOHCD acknowledges the concerns raised regarding the affordable resale price. However, MOHCD does not have the authority to change Planning Code. The suggestions you make would require legislative changes. MOHCD has made recommendations for legislation to permanently raise the AMI up for resale properties where the affordable price falls below the owner's original purchase price. When the AMI is permanently raised, the affordable resale price will be adjusted accordingly to ensure the unit remains affordable to qualifying households.

The pricing formula must be based on a consistent set of assumptions that apply to all BMR units across the affordable housing program. Pricing is determined by unit size rather than household size to maintain consistency, as the unit could be sold to either smaller or larger households.

There is a limited funding source for BMR DALP. Therefore, any available BMR DALP funds are reserved for households most in need who would otherwise not be able to purchase even at the affordable sales price.

Once new legislation is passed to address the issues you raise, MOHCD shall implement them as quickly as possible to avoid prolonged hardship for BMR owners.

Allowing BMR units to progress to market rate is beyond the scope of this Manual. However, we will share your feedback with the Planning Department and remain committed to working towards sustainable and equitable improvements.

**11. Public Comment**

I recently went through the education hours and had my 1:1 with a counselor. They advised me to comment on the Draft of the Inclusionary Affordable Housing Program manual because of the wording in the "Self-employed or Income from Business" section. Specifically regarding the "Positive business cash flow that is consistent and recurring" statement.

I am the sole owner of an [REDACTED] with 18 employees. My W2 income is well below the maximum income for the BMR program however because the profit from the business has to be reported somewhere, as an [REDACTED] it flows on to my tax return. While I am able to (and do) access a small portion of that amount my actual income remains below the BMR maximum income level. I cannot take all of the profit for myself because much of it has to remain in the business account to cover expenses. My business revenue varies from month and is never consistent or recurring. I own a service business, we work when people need our services and we are busiest over the holidays. The counselor I spoke to was unclear on what "consistent and recurring" actually means and wanted me to comment here to ask you to provide more clarification.

Thank you for your reading my comment and I am hopeful the final manual will provide more clarification in regard to the self employed business owner.

**MOHCD Response:**

MOHCD's self-employment income calculation aligns with the income calculation used in the mortgage industry. While most BMR units do not have minimum income limits, buyers will need to have a sufficient amount of income in order to qualify for a first mortgage loan.

MOHCD will review the income reported on the most recent three years of an applicant's personal and business federal tax returns. We will verify whether the amounts reported on each year of the tax returns are recurring or a one-time source of income. If the applicant is currently self-employed, the income is considered recurring for as long as the business is active, regardless of whether the company is reporting positive earnings or a loss for each tax year. In terms of consistency of income, we will review the tax returns to verify if there are large fluctuations in the income reported or if the amount earned by the business is relatively similar each year.

**12. Public Comment**

Balance should be removed from SF MOHCD's list of homeownership education providers due to them being highly disrespectful and discouraging to me and several people I know who have been trying to pursue homeownership. I was dismissed and had to sit through Balance's counselors defending each other and ignoring my concerns when I shared my horrible, disheartening experiences while still having the future of my homeownership in the hands of these Balance housing counselors. [REDACTED] was the chiefly disrespectful person, speaking to me with a terrible attitude, growling and raising his voice to an unprofessional as well as aggressive volume to describe how he frequently tells people they cannot afford their home and it's their own fault when they come to home asking for homeownership advice later as homeowners. Dealing with his hateful attitude should not be a required barrier to homeownership for already disadvantaged communities like mine that have had to deal with the tyranny, disrespect, and systematic gatekeeping that white men and others have routinely subjected my communities to. Balance's other counselors simply said he trained me, so he couldn't have done anything wrong and became angry with me when I persisted to explain what had happened. I received no positive response nor recognition of what I had experienced from Balance. Additionally, I lost important time that could have been filled with additional homeownership education as the full time should have been because Balance counselors such as [REDACTED] wasted the group's time to discuss her hair at great length. Balance should not be billing that time in required homeownership education times to city funds not misusing the time of us hardworking people to discuss her personal life and other completely unrelated tangents. I have no problem with completing the multiple sessions of homeownership, which I did fully complete despite the barriers and undue hardship of doing so due to Balance. To get my proof of completion, I had to provide Balance with my own records and verification that I had attended all of the sessions because they are so disorganized and do such a poor job at their work that they lost the records of my attendance and had not connected them to the account. I had to show them confirmation emails, screenshots from the session that showed my name on the computer, and even reiterate what I had learned plus attend a duplicate session because they did not do their job properly. I missed application deadlines that would have been rare and really useful

opportunities for me to achieve homeownership or even a lower cost rental due to Balance losing some records and not connecting what records they already had. They often made excuses like maybe I didn't put my name and email in correctly which I certainly know I did. Since their sessions were so scheduled so infrequently, I had to wait a very long time to take the next one. I also never received an apology nor recognition for these severe mistakes that cost me to lose housing opportunities. Balance's behavior and poor quality of work is unacceptable, so it's affiliation and endorsement by MOHCD needs to end. Homeownership would be much closer within reach if SF residents were directed to an alternative homeownership education provider and if Balance was removed from the eligible list for future people, so no one has to go through this anymore. I have spoken with family, friends, and neighbors who have been similarly challenged by dealing with the same problems from Balance. Some of them have not been able to complete their homeownership education and are thus barred from housing opportunities due to Balance's mistakes. Balance has replicated and perpetuated many inequities through their actions. We need competent homeownership education from people who can respectfully work with populations who have already faced inequities. Balance has proven time and again that they are not able to provide that adequately.

**MOHCD Response**

MOHCD is very sorry to learn about a negative experience with a HUD-approved housing counseling agency. We appreciate you bringing these concerns to our attention and will share your feedback with the leadership at BALANCE and address it with them accordingly. It is one of MOHCD's goals to ensure that our grantees deliver culturally competent, knowledgeable, services with excellent customer service. To that end, all housing counselors are required to attend implicit bias and trauma informed trainings to equip them with the tools and resources needed to better respond to San Francisco's various communities and families.

**13. Public Comment**

The way PII is defined exposes A LOT of personal information to not being considered confidential. PII can sometimes be public like someone's name is definitely PII and is often publicly known to people who they interact with but should definitely be protected because someone's name being released as a recipient of a program that has publicized income requirements reveals their income because it match the often very specific income ranges to make them eligible. This draft needs to consider that and add on to this definition to make PII more clearly defined and be accurate about what PII is. An explanation of how PII will be protected should be included here, not just a definition. This is very important to those of us who want to know and have the right to know how our information will be used and protected especially when we are required to submit so much sensitive personal information just to have a chance at affordable housing.

**MOHCD Response**

MOHCD only reports out Personal Identifying Information (PII) in aggregate form. PII is never included in reports, public documents or public websites, and can only be viewed by authorized persons. MOHCD collects data on race, ethnicity, sexual orientation and gender identity in order to ensure the programs and services we fund are addressing the needs of the vulnerable communities we serve, and to report anonymous information to key funders like HUD.

MOHCD protects PII from loss, theft, misuse and unauthorized access and disclosure. PII includes your name, address, birthdate, race and ethnicity, gender, sexual orientation/identify, and household size and income.

This information will be included in the Draft Inclusionary Manual.

**14. Public Comment**

There should be a minimum amount of time that BMR renters have to get their down payment and other requirements like getting a mortgage loan done if their building tries to convert their unit to a BMR sale from a rental. People may want to stay but switching from renting to buying just to not be put out of your home is a big process that needs time to get paperwork and funds together since BMRs are already for low to middle income people who may not have a whole down payment ready to go and enough information on homebuying. The process should include an intent to purchase form that must be submitted by the tenant which allows the tenant to put a short hold on the process of them losing their home while they prepare their BMR homebuying steps since there are even more steps to BMR homebuying than normal buying without any program and the “help” the housing counseling companies like Balance provide is not very good and not quick at all. A lot of people will lose their homes or landlords could use this as a workaround to put their tenants out if there isn’t enough time to buy the unit you are living in and a lot of housing instability would occur because of that.

**MOHCD Response**

Currently, renters have up to one year from the time they receive notice that their building is converting to ownership to prepare to purchase. And, among other things, the purchase price is tailored to be affordable based on their household income.

The proposed changes in the Draft Manual (including incorporating an “intent to purchase” form) aim to address some of the concerns raised by incorporating steps to support renters in their journey to homeownership. There are proposed changes to the buyer’s financial requirements that will significantly reduce the down payment requirements from 3% plus buyer's funds for closing costs to 1% of the sales price with the closing costs being financed. These changes are intended to support low to middle-income individuals with limited funds to achieve homeownership.

**15. Public Comment**

Certificates of preference are ranked so low down the housing preference list that they are not even useful and really don't help. They don't do what the city pretends they do because there are so many categories ranked above CoP holders. It's hard to even use your certificate because you get ranked so low in lotteries for homes and it was so unclear whether CoP holders get any preference in the section 8 applications that were recently done. We were told yes then no then back and forth and the website said something different than the live info session so it just created confusion and the online ranking list showed COPs were after almost everyone, so the city has pretended to help but given us something close to useless. Fix the rankings so the city doesn't keep pretending this bandaid from the city's past wrongs is helping when it isn't.

**MOHCD Response**

In City-sponsored affordable housing, Certificate of Preference holders are always at the top of any applicant or affordable housing waitlist. There is no preference higher. Your comment may be related to the San Francisco Housing Authority, and we will pass this information to them.

**16. Public Comment - *San Francisco Real Estate Agent Feedback as of June 12, 2024*****A. Sales Contract/Purchase Agreement Pg 30****Current Policy**

1. Manual doesn't specify that the SFAR Purchase Contract be used instead of the C.A.R. Residential Purchase Agreement.
2. There is also no mention of how extensions in time beyond the initial 60 days are communicated to all parties of the transaction. Sample agent study suggested regularly getting conflicting information from multiple parties involved in a singular transaction based on communications from MOHCD.

**What This Means**

1. Buyer confusion around which purchase agreement to use creates needless back and forth communications to expedite processing.
2. Lack of clarity of how long each part of the transaction will realistically take and when it will close makes it difficult for seller, buyer, lender, agents to make plans and take action. Communications around delays due to holidays should also be clearly communicated.
3. Delays in a sale cost sellers and buyers money. A seller continues to pay mortgage, insurance and HOA dues. Buyers can lose a rate lock on their interest rate. Both are expensive

**Suggested Policy Change**

1. Specify the correct contract to use.

2. Send a single email with a specific date that can be seen, acknowledged and understood clearly by all parties to the transaction on any time extensions and be specific on COE date and when it will take place.

### **Sales Contract / Purchase Agreement**

MOHCD provides a form of an addendum to a purchase agreement for use by the Project Sponsor or BMR Owner for each BMR Ownership Unit. Resale BMRs use the San Francisco Association of Realtors purchase agreement and shall incorporate the MOHCD purchase agreement addendum for each BMR Ownership Unit. This addendum specifies contingency and close of escrow timelines (described in this section), fees typically paid by the seller (described in Section IV(B)(8)(b) of this Manual), and other terms and conditions required under this Manual, including but not limited to proper disclosure to the buyer of the financing contingency deadlines, the buyer's earnest money deposit refund policy, no per-diem or similar charges if the buyer is proceeding with the sale in good faith, and the prohibition of dual agency unless prior approval by MOHCD.

An applicant has seven (7) calendar days from the date of the MOHCD conditional approval letter to enter into a purchase contract with the seller of a BMR Unit. The purchase contract must include:

- at least a 45-day financing contingency period; and
- at least a 60-day close of escrow period.

It is important to note that BMR sales transactions are sometimes extended beyond the 60-day period to accommodate both the buyer and, the seller or MOHCD. If the buyer is proceeding with the sale in good faith, the seller (Project Sponsor or BMR Owner, as applicable) shall not impose per-diem charges for failing to close the sale within the original close of escrow date. Any time-frame extensions beyond the original 60 days borne of processing by the MOHCD, will be communicated to the Listing Agent, Lender, Buyers Agent, Seller, Buyer and Escrow Holder by the MOHCD in a single email to set equal expectations for all parties involved in the Transaction.

#### **A. MOHCD Response**

1. While real estate agents are welcome to utilize the San Francisco Association of Realtors (SFAR) Purchase Agreement, the flexibility to use other contracts, such as the California Association of Realtors (CAR) Residential Purchase Agreement, is necessary. This approach accommodates diverse transaction needs and aligns with California laws prohibiting a mandate for the use of specific forms in real estate contracts.
2. MOHCD strives to provide clear and consistent communication in all transactions. We acknowledge room for improvement for the communication about extensions. The existing process involves notifying all relevant parties when extensions are requested beyond the original



60-day processing period. We will continue to ensure timely and transparent communication in these cases. As is customary in real estate transactions, the seller's agent and the buyer's agent are always involved as they are responsible for handling the extension process.

Please refer to MOHCD response to Comment #4 above regarding dual agency.

In multi-layered financing of home mortgages, each lender has a specified timeframe to complete their review. The 60-day timeline is meant to provide all lenders in the transaction adequate time to approve and finance their loan. Within the 60-day BMR timeframe, the first mortgage lender is allocated 30 business days to achieve loan approval and MOHCD is allocated 10 business days for loan approval and funding. MOHCD has analyzed the 124 BMR transactions conducted over the last year and found that 99% of extension requests were made because the first mortgage lender exceeded their 30 days. When MOHCD receives a complete loan approval package from the first mortgage lender, it consistently conducts review, approval, and funds within the allotted 10-day timeframe.

**B. Public Comment - *San Francisco Real Estate Agent Feedback as of June 12, 2024***  
**DUAL AGENCY & Commission - Pg 31.**

**Current Policy**

No dual agency allowed, except by approval of MOHCD.

**What This Means**

This currently means that agents from the same brokerage cannot represent both the buyer and the seller. As an example, a Coldwell Banker buyer's agent cannot automatically represent their buyer if the property is listed by a Coldwell Banker listing agent. Exceptions are considered on a case-by-case basis which can take several weeks/months for a MOH staff-person to approve. There is consensus among the real estate community that this is impractical, harms buyer representation and experience, and causes unnecessary delays in transactions.

As of August 2024, per the National Association of Realtors settlement, agents will need to sign Buyers Agency Agreements, solidifying the buyer and agent relationship. Buyers build trust and receive education from their buyer agents over a period of weeks, months and even years. Buyer agents act as advocates for buyers, coaching them through the daunting process of home buying. They are professionals with a fiduciary duty to help safeguard their buyer's interests, guide them through the closing process and help solve problems along the way. For a buyer who won the lottery to suddenly have to be transferred to a different agent in a different brokerage is a draconian policy measure.

Dual agency is likely in San Francisco due to market consolidation, resulting in fewer firms than a decade ago. As an example, Rob Belli is one of the most seasoned BMR listing agents in San

Francisco with decades of experience. He is currently at COMPASS where there are over 700 agents. Current policy is that a lottery-winning buyer who has a COMPASS buyer's agent would have to request an exception to keep her agent. Therefore, requests for exceptions will be high, consuming significant MOHCD staff time for review and delaying the process.

### **Suggested Policy Change**

Automatically allow different agents from the same brokerage to represent buyers and sellers (dual agency).

Maintain the restriction that a single agent should not represent both the buyer and seller in a transaction, unless approved by MOHCD. This policy should apply to both new construction and resale properties.

### **Real Estate Agent Representation**

All real estate agents in a BMR transaction shall:

- Be licensed by the California Department of Real Estate (DRE);
- Represent a BMR buyer in all aspects of the transaction; and
- Refrain from serving as a single agent with dual agency defined as a real estate agent, who acts as both seller's agent and the buyers' agent in a transaction, unless otherwise approved by MOHCD.

### **COMMISSION FOR REALES - Pg 31.**

#### **Policy in Draft Manual**

Seller has choice to cover all real estate commission costs, provided they do not exceed five percent (5%) of the BMR resale price.

This paragraph also prohibits a single agent from representing both the buyer and seller AND their affiliates (any one from the same brokerage).

#### **What This Means**

This new policy, while consistent with upcoming changes in real estate throughout the country, is detrimental to BMR buyers and the ultimate sale of the unit for BMR sellers. BMR buyers, compared to market rate buyers, have the least amount of resources to purchase a home.

BMR buyers need funds for down payment, lender fees, escrow fees, title insurance, title fees, HO-6 insurance, HOA dues, impounds and more. If they are now responsible to pay for buyer agent commission, this additional expense may make the purchase impossible. Please note that compensation to the buyer agent isn't something that can be financed.

### **Suggested Policy Change**

Mandate that sellers cover all real estate commission costs, provided that they do not exceed five percent (5%) of the BMR resale price. The BMR Owner's Agent (selling agent) is prohibited from acting as the BMR buyer's agent, unless otherwise approved by MOHCD.

**Commission for BMR Resales**

When reselling a BMR Unit, the BMR Owner must cover all real estate commission costs, provided they do not exceed five percent (5%) of the BMR resale price. However, if the BMR Owner opts not to cover the entirety of the real estate agent commission costs, both the BMR Owner and the BMR buyer are equally responsible for these costs, which shall not exceed five percent (5%) of the BMR resale price. The BMR Owner's agent (selling agent) is prohibited from acting as the BMR buyer's agent, unless otherwise approved by MOHCD. Both seller's and buyer's agents must comply with all applicable laws related to commissions

**B. MOHCD Response**

Please refer to response to Comment #4 above regarding dual agency.

While we understand the concerns raised regarding sellers covering all real estate commission costs, it's essential to recognize that BMR sales are subject to the same legal and regulatory framework as other real estate transactions. Any policy changes must align with state and federal laws to ensure compliance and uphold the integrity of the process.

While MOHCD is unable to implement a policy that will contradict legal requirements, we're committed to finding solutions to address concerns regarding buyer's closing costs, including real estate commission fees. In the Draft Manual, we have proposed to increase the combined loan to value from 97% to 105%. This increase is intended to provide additional financial support to cover closing costs incurred by first-time homebuyers, including real estate commission fees. 0

We understand the importance of adapting to evolving real estate practices, especially in light of recent developments with the NAR settlement. Depending on the outcomes of these changes, we remain open to further adjustments that ensure fairness and accessibility within the BMR resale process while remaining compliant with legal mandates.

**C. Public Comment - *San Francisco Real Estate Agent Feedback as of June 12, 2024***

**Reselling a BMR Unit, Page 42**

Managing Buyer AND Seller Expectations About Future Sale's Price

**Current Manual**

There is no mention that a BMR buyer could possibly lose money when they sell the BMR unit.

The challenge of pricing is mentioned on page 44 of “Maximum Resale Price” but should be more up front.

**What This Means**

There are BMR sellers who have tried selling their BMR units, even with price reductions and being on the market for over a year +. These sellers feel angry and trapped. Their HOA dues are increasing and it’s unaffordable for them to continue living in the unit.

**Suggested Language to add into the Manual**

“BMR units are not immune from market conditions. Real estate markets are cyclical and can change over time. It is impossible to predict future market conditions with accuracy. It is important that Buyers understand the potential for little or no appreciation in value, or an actual loss in value, of the property they purchase.”

**C. MOHCD Response**

Please refer to Section IV (D) (2) of the Draft Manual for the information included to address fluctuating market conditions. We recognize the significant impact market conditions can have on a BMR owner's ability to sell their unit. Therefore, BMR owners should be prepared to negotiate, especially in a down market, and may need to adjust their selling price accordingly to attract buyers. While we believe that the existing language in the Draft Manual addresses the concerns raised regarding market conditions and the potential for fluctuations in property values for BMR units, we will consider adding more specific language regarding the potential for little or no appreciation in certain markets.

**D. Public Comment - *San Francisco Real Estate Agent Feedback as of June 12, 2024***

**MOHCD Resale Processing Timeline - Page 43**

**Proposed Manual**

Shows timeline from Pricing all the way to Closing.

**What is Missing**

No mention of the Capital Improvement Request. This has been adding about 30 to 90 days to the process. Therefore sellers and their agents don’t have realistic timelines and get frustrated. Additionally, there have been times there is no acknowledgement that the pricing request has been received, therefore we do not know when the day count begins.

**Suggested Change**

Add the Capital Improvement/Special Assessment Request Process into the grid.

**D. MOHCD Response**

The capital improvement policy stipulates that homeowners must submit their requests within 6 months of completing the work. For detailed information, please consult Section IV (D) (2) (c) of the Draft Manual. Additionally, it's important to note that during pricing requests, homeowners should include any approved capital improvement credits from MOHCD rather than submitting a new request.

However, we acknowledge that there have been occasions where processing requests for capital improvement credits beyond the 6-month timeframe have been accommodated as a courtesy and exception to benefit the owner. To ensure timely closings, MOHCD shall refrain from such accommodations in the future.

Regarding instances where there is a lack of acknowledgment upon submission of pricing requests, resulting in uncertainty about when the day count begins, we are committed to improving our procedures. We will ensure that our staff provides timely acknowledgment of receipt for all complete pricing requests, thereby clarifying the starting point for the processing timeline.

#### **E. Public Comment - San Francisco Real Estate Agent Feedback as of June 12, 2024**

##### **MARKETING AT RESALE, page 48 Comments on Current Policy**

There is language for listing agents to outreach to buyers. Some of the marketing techniques are outdated. It doesn't reflect that the MLS syndicates to third party websites. Additionally, per the new NAR settlement, compensation to buyer brokerage can no longer be posted anywhere in the MLS, even agent comments. It will likely only be mentioned on the DAHLIA web portal. Additionally, there is a new document called, "Buyer Representation and Broker Compensation Agreement" that will need to be incorporated into the contract.

**Suggestions.** The BMR Units must be marketed for at least 21 calendar days preceding an application deadline. MOHCD will announce the available BMR Units on its email housing alert system and on the DAHLIA San Francisco Housing Portal. Among other requirements, the BMR Owner's real estate agent must:

- Conduct targeted marketing to prospective buyers and buyers agents using various channels such as online forums, social media, email campaigns, and flier distribution.
- BMR Units must be listed in the San Francisco Multiple Listing Service (MLS) to promote availability to buyer agents and generate public awareness. Ensure that it is syndicated to third party sites such as Zillow, Realtor.com, etc for maximum exposure.
- Hold a minimum of 3 open houses - including at least one weeknight and one weekend day, with each open house lasting at least two hours.
- Place a "for sale" sign that is easily visible from the street in accordance with the HOA regulations.

- Market Accept applications and distribute lottery information in accordance with the most recent MOHCD application policies and procedures.
- Field all questions regarding the BMR Unit listing.
- Ensure completeness of all paper applications (if applicable). Isn't this obsolete given today's process? Or are you saying that it is the seller agent's responsibility for the buyer to perform vs. the buyer's agent?
- Be in compliance with all applicable federal, state and local laws relating to Fair Housing and Realtor codes of ethics.
- Protect the personal identifying information of all applicants in accordance with this Manual and California law.
- Attend and assist with the BMR public Lottery.
- Buyers' Agents contact their client applicants in the lottery rank to invite them to submit a full application in accordance with the MOHCD's instructions.

**Lottery Process** - The MOHCD Housing Preferences and Lottery Procedures Manual, as revised from time to time, contains detailed procedures for application tracking, lottery preference qualifications, application review guidelines, and appeals.

#### **Closing**

Buyer's brokerage compensation is paid by the BMR Owner and must be documented in a Buyer Representation and Broker Compensation Agreement with the BMR buyer's brokerage. Additionally, once the BMR Unit is sold, the new BMR Owner shall not lease any part of the BMR Unit at any time, including, but not limited to, the previous BMR Owner (seller).

## **E. MOHCD Response**

MOHCD believes our current marketing content aligns with your suggestions. Below are the specific points regarding your suggestions:

- In line with the new NAR settlement, we understand that compensation to buyer brokerage cannot be advertised publicly on the MLS. This requirement will be noted on the DAHLIA web portal as necessary. This is consistent with the information included in the Draft Manual.
- Regarding door knocking, we believe it remains a necessary and appropriate marketing strategy, similar to marketing for market-rate units.
- While paper applications will remain in place, the vast majority of our applicants have access to and submit online lottery applications. However, we occasionally may have buyers who need assistance in submitting their applications in paper format. It is the listing agent's responsibility to assist buyers who need paper applications.
- The policy regarding buyer's brokerage compensation is addressed in the "Commission for BMR Resales" section (page 31 of the Draft Manual). Where to document this brokerage compensation is governed by real estate practices and laws, which may change over time.

MOHCD will consider adding more specific language to ensure that MLS listings are being syndicated to third party sites (such as Zillow, Realtor.com) for maximum exposure.

## **F. Public Comment - *San Francisco Real Estate Agent Feedback as of June 12, 2024***

### **ADDITIONAL SUGGESTIONS AND QUESTIONS**

**Educating Buyer and Seller Agents** The agent community is eager to partner with MOHCD to better manage buyer and seller expectations and experiences. We propose an agent-centered workshop to gain insights into MOHCD's processes. This workshop would help us understand the inner workings at MOHCD, making us better partners.

BMR, DALP, and City-Second transactions have unique ebb, flow and challenges. We want to be clear about our role vs. the lender's role. We suggest collaborating on a curriculum for agents working with MOHCD's affordable housing programs. This training could be co-sponsored by The San Francisco Association of Realtors, with certificates awarded upon completion.

Ultimately, this initiative would improve agents' understanding of MOH rules and regulations, resulting in a more knowledgeable pool of agents that enhance the buyer and seller experience.

### **Quickly Increase AMI if Pool of Buyers Has Been Exhausted**

There is a growing number of condos with high HOA dues (\$750, \$1000, \$1200+), making them difficult to sell to buyers at 100% AMI. The current AMI does not seem to keep pace with these

costs.

- Has MOH considered these substantial monthly costs?
- Can the AMI be expeditiously increased to 110% or 120% to increase the buyer pool at initial pricing (while prioritizing lower AMI candidates)?
- Alternatively, can the AMI be raised after 60 days from the lottery draw instead of the current 6 months? Or sooner if there is a low number of “live” applicants?

### **Continue to Grow Applicant Pool**

After the Lottery, MOH should continue to accept applications. Once the Lottery list is exhausted, those denied for being 10% over AMI should be allowed to reapply if no other applicants are in the queue. Exceptions should be provided if HOA dues exceed \$750.

### **DALP Funds for BMRs**

Would it be possible for MOH to consider allowing BMR DALP regardless of affordable price allowing for MOH to realize higher share of appreciation if Buyer signs acknowledgement?

### **Why Does it Take 30 Days for the City to Determine Pricing?**

We are curious to understand the process and how pricing is derived. The manuals would dictate available formulas. Can they be shared?

*San Francisco Real Estate Agent Feedback as of June 12, 2024*

### **Speeding up the Process**

- What can be done to expedite the process at any stage?
- Is MOH under-staffed?

## **F. MOHCD Response**

### **a. Educating Buyer and Seller Agents:**

Providing training and education workshops to real estate agents is a key area in our program goals. We would like to provide training and maintain a list of real estate agents who are knowledgeable and experienced in our programs, similar to the list we maintain for lenders. In 2025, we will welcome the opportunity to collaborate with the San Francisco Association of Realtors and partner with the real estate agent community to organize these training sessions.

### **b. Quickly Increasing AMI if Pool of Buyers Has been Exhausted:**

For initial sales of BMR units, the monthly HOA dues (property taxes, and other housing costs) have been factored into the sales price to ensure affordability for buyers at designated income levels. For resales, we have proposed an enhancement to the resale price formula in the Draft Manual, ensuring that HOA dues and other housing costs are also calculated in the maximum resale price. We agree that raising the AMI sooner than 6 months after lottery is a sound strategy to increase flexibility and responsiveness in slower market conditions and are actively working on implementing parameters around this adjustment.

### **c. Continue to Grow Applicant Pool:**



After the lottery, when all applicants on the lottery list have been considered and no eligible buyer is identified, MOHCD will accept applications on a first-come, first-served basis. If there is an increase in the AMI, MOHCD notifies applicants who were previously disqualified for being over income if the applicant's income now falls within the revised AMI range to see if they are interested in proceeding with purchasing the unit. Please refer to response b. above regarding the HOA dues.

**d. DALP Funds for BMRs:**

BMR DALP funds are limited and solely derived from repayment of previous BMR DALP loans. As with all MOHCD programs, we will continue to explore additional possible funding sources to increase availability of BMR DALP funds.

**e. Why Does it Take 30 Days for the City to Determine Pricing:**

The process of determining pricing involves thorough analysis and adherence to established formulas to ensure compliance with program guidelines. We acknowledge the need for expediting resale timelines and will continue to enhance our processes to issue resale pricings as quickly as possible.

**f. Speeding up the Process:**

MOHCD is committed to expediting the process wherever possible. MOHCD continuously reviews procedures to identify and address bottlenecks. Staffing levels are regularly assessed to ensure we can meet the demand and provide timely service.

**17. Public Comment**

Commissions are very low considering all the work and time invested in representing a BMR seller. I have been working on one since the beginning of the year. The preparation for sale, getting quotes, supervising contractors, buying materials (e.g., appliances, fixtures, etc.). All of this takes a lot of work that we should be compensated for. **Higher commissions are long overdue.**

**MOHCD Response**

Consistent with the NAR settlement, commission rates are determined by mutual agreement between the buyer and the seller. It's essential to recognize that BMR sales are subject to the same legal and regulatory framework as other real estate transactions. Any policy changes must align with laws to ensure compliance.

**18. Public Comment**

I am also a part of the agent group that has reviewed the 2024 manual and support the changes that [REDACTED] submitted on June 12, 2024. We look forward to making this process easier for all.

**MOHCD Response**

Please see our responses in Comment #16 above.

**19. Public Comment**

This feedback is regarding the following clause on page 59:

"MOHCD will work to respond to an appeal for reconsideration within 5 business days from the date of receipt of the appeal request. Project Sponsors will hold one appropriately sized BMR Rental Unit for the disqualified Household during the five (5) business day appeal period; however, they are not required to hold the applicant's preferred BMR Rental Unit. Once MOHCD makes a decision on an appeal request, that decision is final."

The way this is worded vaguely suggests that the tenant's appeal will likely be wrong, and that there's no need to hold the applicant's preferred unit. I don't think this is fair for a couple reasons. For example, if the BMR MOHCD employee, who approves eligibility, is unfamiliar with different ways an applicant can be approved, like using the 25% increase in income eligibility if one's income is non-taxable, why would the applicant lose their ability to obtain their preferred unit?

The order in which the lottery selects you for choosing a unit, is extremely important to applicants. For example, if you were number one on the list for choosing a BMR unit, and chose the biggest and best one bedroom that the building provides, the appeal process essentially punishes the applicant if the MOHCD employee is unaware of different ways an applicant can qualify. As stated, someone with first choice of the 1 bedroom units, could wind up in the smallest studio, depending on how long the appeal process takes.

Additionally, I think it's very important to train that MOHCD employee, that when doing something such as applying the 25% increase for non-taxable income, that they realize it's up to the applicant, and not the MOHCD, as to whether or not it needs to be applied.

And, the MOHCD employee may want to check if income documents such as SSDI have been submitted, when the applicant says they have been submitted, before telling them that they're just not sure if that document has been submitted, and to begin the appeal process.

I would also encourage that MOHCD employee to work more closely with nonprofit housing organizations that provide help to applicants. For example, if the supervisor of one of those housing nonprofits sends an email to an MOHCD employee, and states that an applicant clearly qualifies, and asks why the applicant has to go into the appeal process, that the MOHCD employee should take that request seriously.

I think especially they should not just ignore the housing nonprofit and instead call the applicant directly and try to convince them to begin the appeal process.

Maintaining rank lottery order during the appeal process would fix all these things, that I personally experienced with [REDACTED], when I was lucky enough to have first choice for a one bedroom, when applying to the Astella, in 2021.

Also, as written, it leaves a loophole for fraud. For example, if the MOHCD employee, or the property's assistant manager, knows people that have applied for that building, and are a little farther down on the lottery list, and want to get them a better apartment, each appeal moves that person up one, getting a better choice of the apartment that they want.

\*\*\*I would like the 2024 manual to clearly state that "The MOHCD BMR rental contact will review all possible pathways to eligibility, and provide a document to the applicant describing why or why not each particular pathway is viable, when given the applicant's unique income profile."

\*\*\*I would like the manual to state "If there is a need to appeal an application, the applicant's lottery rank order will be maintained, until the appeal process is complete."

Lastly, in terms of the equal application of rules for BMR homeownership and BMR rental, I have a question. When applying for ownership, if the application is appealed, does that person no longer have the ability to buy that home?

### **MOHCD Response**

While it is the responsibility of leasing agents to calculate applicant income, MOHCD does provide training through written BMR leasing guidelines. MOHCD calculates income when an applicant is denied and appeals the leasing agent's decision. Both MOHCD staff and leasing agents are required to evaluate an applicant's eligibility following these procedures and all denial letters fully explain the details for the basis of denial.

MOHCD strives to create procedures to ensure the leasing process is fair, efficient, and conducted in a timely manner. In an effort to balance efficiency with lottery rank unit selection, MOHCD has implemented a Unit Selection Form to be completed which allows the applicant to select their top three units choices. At no time is any one particular unit choice guaranteed until a lease is signed. Once a denial appeal is received, building owners strive to hold one of an applicant's 3 choices. MOHCD agrees that the unit selection form should be completed by denied applicants once an appeal is received and will highlight this step in its leasing agent training.

Homeownership units are not selected until applicants have completed the income qualification process, including appeals on denials.

### **20. Public Comment**

Please give to the parking space.

Perhaps MOH to treat parking paid for by a seller as a capital improvement with some value given if not at least what was paid?

Or some other value?

Right now, MOH is not giving value to the parking and in San Francisco, parking is very valuable.

Perhaps

1. Stackable - \$30,000

2. Independent - \$50,000

**MOHCD Response**

Please refer to Section VI (H)(2) of the draft 2024 Inclusionary Manual update regarding the price of parking spaces.

**21. Public Comment**

I am part of the agent group that has reviewed the 2024 manual support the changes that [REDACTED] submitted on June 12, 2024.

**MOHCD Response**

Please see our responses in Comments #16 and #17 above.

**22. Public Comment**

Currently, renters are charged a pro-rated amount for parking spaces. I think all fees that a BMR renter can be charged for should be pro-rated.

For example: at the Astella, we are allowed only 1 white plastic card key. If we lose it, we must pay \$250 to have it replaced, the same as market rate tenants.

\*\*\*I would like the manual to state: "All incidental fees (such as a lockout, or gym membership) that a BMR renter can be charged by their landlord, will be appropriately pro-rated down from the fee that a market rate tenant pays."

**MOHCD Response**

The Draft Manual addresses fees for BMR Renters. Please refer to Section V.B.12.

**23. Public Comment**

Please allow the dual agent to help the sales. Most buyer agents not really familiar with MOH and BMR that caused buyer can't pass the application.

**MOHCD Response**

Please refer to Comment #4 above regarding dual agency.

**24. Public Comment**

In my building, all utilities are paid for except WiFi. When the federal government recently ended their \$35 subsidy, the internet was no longer affordable for many low income, fixed budget, BMR renters. Lack of an internet connection perpetuates poverty.

And the Wifi router and modem must be individual to each unit. My previous residence was the Dalt SRO in the Tenderloin. They provided one signal for the entire building. Unfortunately, I was so far from the router that the weak signal would often disappear. Additionally, public internet access is not safe for using

personal, financial, or medical/insurance information. Private access is especially important for disabled individuals, or those with mobility problems.

I would suggest that the landlord install internet equipment in each BMR unit. For every person in the unit, a download speed of 50 Mbps will be added.

\*\*\*I would like the manual to state: "When all utilities are included in a BMR rental unit, the project sponsor will provide an individual, in unit internet connection of 50 Mbps for each individual resident. For example, a unit with two residents would be provided a minimum of 100 Mbps download speed."

#### **MOHCD Response**

The Procedure Manual updates address an internet connectivity standard. Please refer to Sections VI.H.5 and VI.L.4.

#### **25. Public Comment**

I was involved with multiple agents and Sellers hoping to help the community and MOH with respect to BMRs and process. Have been working with MOH since 90s. Would be happy to be a resource to MOH with perspective as a lender and realtor. There are things I wish MOH would consider that could make things easier for all. I will try to go through draft manual:

1. Resale BMR estimated valuation – When the purchase year is entered is the formula changed by Program Manual guidelines?
2. Why does MOH have different qualification criteria than Fannie Mae and Freddie Mac? MOH can add the Asset Test on but having separate guidelines makes it challenging for lenders and Buyers to qualify. I can see the not wanting people to “game the system” and doing a look back. MOH has limited staff and it would probably help if the differences in guidelines were minimized. I am seeing too much “fall out”/disqualification and wondering why? Might also help to get more lenders on the list. It is a lot of work helping BMR buyers get qualified and sometimes after years with no “reward” when they choose not to proceed.
3. In high application times when Counseling or Pre-qualifications/approvals are difficult to obtain the exception forms should be allowed for both projects (i.e. China Basin) and Resales in lieu of stopping lotteries. Unfortunately, the interest level may wane and Sellers may end up holding onto properties longer than necessary.
4. Consider for Lotteries:
  - a. Continue accepting applications even after lottery date
  - b. If lottery list is exhausted go to applicants as FCFS
  - c. If no applicants available move to higher AMI to encourage sale
5. Dual Agency
  - a. For small brokerages limiting dual agency is an impediment to growth. As broker I have expenses to pay rent, insurance, utilities, payroll, etc. I am not making money as this is more a passion to help others. If I list a property I have to discourage my newer agents from developing buyer relationships? This is counterproductive. We need to recruit younger agents, more diverse agents to serve different communities and this is an impediment to my businesses, the fostering of newer agents and to MOH program.

b. With new CAR/NAR rules Buyers agents by August 2024 must have Buyer Representation Agreements signed. I am sure it was a headache for MOH when listing agents were trying to use procuring cause for whose clients Buyers were. With Buyers Representation Agreement that becomes less likely.

c. Buyers are confused when we “hand them off to someone else” after having long term working relationships that can include assisting them to submit applications online and now the “care and treatment” of the client relationship is different.

6. Why have agents submit contracts at application? Was it to determine who Buyer’s Agent is? Buyers Agent Representation Agreement can be submitted in lieu after August 2024.

7. Contract extension requests are not necessary in most instances. If something were “falling out” there would be a “Notice to Perform” in place. It is an extra step for Sellers, Buyers and MOH and may be an unnecessary concern to Seller that could pressure Buyers side.

8. Should Trusts be encouraged upfront for Title Purposes? Provide sample.

9. BMR DALPs should be offered to Buyers when no other applicants exist to allow Sellers to move on even if the Affordable Price is not contractual price. MOH should consider taking a higher share percentage to allow Buyers the opportunity to buy.

10. MOH needs to allow BMR rental if unit can not sell. Agreements by City Attorneys should be drafted with verbiage regarding Just Cause Evictions and other. Sellers should be allowed to “break even” and no relocation fees paid if over 12 months rental as per SF Rent Control with an exemption. Tenants can be given priority for BMR purchase.

11. Inspections:

If to code at time of construction why should Sellers be required to bring to current code? (I.e. GFCI.)

a. Building Department does not require as Point of Sale.

12. Does MOH keep contracts? Was told they don’t and found out some Developers representatives did not give to Sellers.

13. MOH to treat parking paid for by a Seller similar to Capital Improvement at the least with some value given if not at least what was paid? Or some other value? Right now... MOH is not giving value to parking and in the City... parking is very valuable. Maybe they can add a monetary value like:

a. Stackable is \$30k

b. Independent is \$50k

This would allow Sellers to “downsize” and open up units for families or people that cannot use public transportation.

14. Special Assessments – We will start to see more of these as buildings age, construction costs continue to rise, reserves are inadequate or SB800 settlements are insufficient. Let’s discuss what can be done as high density is the expectation but we don’t want problems after 30 years.

15. Unofficial Valuation Estimate – Can this be created based on Unit’s recorded BMR use restriction (Program Manual at time of closing)

### **MOHCD Response**

1. The estimated resale calculator on MOHCD’s website applies to BMR units governed by the 2007, 2013, and 2018 Manuals. It is a tool for families to get an idea about what their resale value may be. The resale calculator uses a formula based on changes in AMI over time. As indicated on

our website, the online resale calculator does not work for older units created under the 1992 Manual or are part of the Limited Equity Program or the older units under the Condo Conversion Program.

2. First mortgage lenders consider the income and assets of the loan applicant, while Planning Code requires that MOHCD consider total household income and assets. In fiscal year 2022-23, a total of 124 BMR sales transactions occurred. 4 applicants “fell out” of a transaction because their assets pushed them over the total household income limit. For other lending guidelines (such as calculating debt), we align with first mortgage lenders and clarify in the Draft Manual that our guidelines are designed to be consistent with Fannie Mae and Freddie Mac, wherever possible. Regarding lender recruitment, MOHCD is consistently recruiting and adding new lenders to our list. Over the last year, 12 new lending institutions, providing 35 new loan officers, were added.

3. MOHCD strives to create procedures to ensure the sales process is fair, efficient, and conducted in a timely manner. The decision to pause a lottery to allow applicants more time is solely up to the seller.

4. The Inclusionary Manual has no prohibition on a seller’s realtor continuing to solicit and keep a list of interested buyers after the lottery date to encourage them to apply first come first served. Increasing the maximum allowable qualifying AMI is currently a policy outlined in the Inclusionary Manual. Please refer to our responses to Comment #16F(b) and F(c) for more information.

5. Please refer to Comment #4 above regarding dual agency.

6. For re-rentals, MOHCD requires the submittal of the purchase offer at the time of application to ensure that the offer meets the program requirements. A Buyer Agent Representation Agreement may not be submitted in lieu of the actual purchase offer because it does not provide all the necessary information to ensure program compliance.

7. The terms of the real estate contract are not within the scope of the Inclusionary Manual.

8. While it is not within the scope of the Inclusionary Manual, providing information with an example of Trust options upfront is an interesting idea that MOHCD staff shall consider.

9. Please see MOHCD’s response to Comment #10 listed above with regard to BMR DALP.

10. Please see MOHCD’s response to Comment #9. B. listed above with regard to BMR owners renting their units.

11. To ensure that low and moderate-income first-time homeowners are purchasing homes that are within the minimum standards of safety, health, and general welfare, MOHCD requires updates to certain items prior to sale.

12. MOHCD needs further clarification to be able to provide a response to this comment.

13. Please refer to Section VI (H)(2) of the draft 2024 Inclusionary Manual update regarding the price of parking spaces.

14. MOHCD staff is always eager to discuss strategies for ensuring sustainable homeownership.

15. Please see response #1 to your comments.

**26. Public Comment**

I am part of the agent group that has reviewed the 2024 manual support the changes that [REDACTED] submitted on June 12, 2024.

**MOHCD Response**

Please see our responses in Comment #17 above.

**27. Public Comment**

Good afternoon! I am a part of the agent group that has reviewed the 2024 manual support the changes that [REDACTED] submitted on June 12, 2024.

**MOHCD Response**

Please see our responses in Comment #17 above.

**28. Public Comment**

\*\*\*Center Policies and Procedures around Equitable Outcomes

-As a BMR renter, I have experienced socioeconomic, racial, and disability bias and discrimination with your program. I have noticed that there are apartment buildings that are NOT inclusive to ALL people or applicants because of their race, financial status, physical and mental/behavioral health status if they don't typically reflect that of the demographic or population within upwardly mobile neighborhoods in the city. Like the newest development, Shirley Chisholm Village in the SUNSET/PARKSIDE district, I noticed that neighborhood is off limits to the general public and the floor plans are more like apartment homes which is vastly different from many other developments throughout the city. Another example, the City and County of San Francisco continues to allow MERCY HOUSING to build places that minimally meet the ADA codes (like NO ADA units on the ground floor, lack of push buttons to common area entry and exist ways, no



loading area zones especially because Mercy continues to build with NO RESIDENTIAL PARKING SPACES and use their ground floors for retail spaces. In other words, the systemic REDLINING needs to be seriously addressed and STOPPED immediately! Agencies like MOHCD, SFHA, Catholic Charities, and other organizations that are supposed to help the people need to really stand on their inclusionary policies that they maintain make them fair and equitable for ALL.

**MOHCD Response**

The San Francisco Inclusionary Housing Program requires new residential projects of 10 or more units to include a percentage of BMR units or pay a fee. The Inclusionary Manual governs projects where the project sponsor has included BMR units within their market rate building, rather than pay a fee to meet the affordable housing requirement. Market rate buildings do not have the same ADA requirements as buildings built with other funding sources. Additionally, the Inclusionary Manual does not have the authority to dictate where a project sponsor builds.

Shirley Chisholm Village was built using tax credits governed by the state and federal government and is a 100% affordable building. It is not subject to the same requirements as Inclusionary Housing. The project is built on land owned by the San Francisco Unified School District in partnership with MOHCD and therefore, it is dedicated to housing teachers and school employees.