CCAH
California Council for Affordable Housing

July 23, 2026

California Department of Housing and Community Development
Director Gustavo Velasquez
651 Bannon Street
Sacramento, CA 95811

RE: Final Loan Portfolio Restructuring Guidelines – Request for Reconsideration and Notice of Legal Concerns

Dear Director Velasquez,

I write on behalf of the Board of Directors and members of the California Council for Affordable Housing (CCAH) with significant concerns regarding the Loan Portfolio Restructuring guidelines (LPRs) released on June 9, 2026. While the Department of Housing and Community Development (the Department) was presented with a meaningful opportunity to transform the LPR program into an effective tool for housing production, the final guidelines fall far short of that objective and, in several critical respects, appear inconsistent with the legislative intent underlying AB 130 and SB 686. Portions of the guidelines also raise substantial questions regarding the scope of the Department's statutory authority, the treatment of private property interests, and the legality of imposing conditions not expressly authorized by the Legislature.

The effort to modernize the LPR guidelines and allow for the extraction of equity spanned three legislative sessions, beginning with AB 515 in 2023 and AB 2638 in 2024 before ultimately succeeding through AB 130 and SB 686 in 2025. The legislation was intended to create a clear and predictable pathway for affordable housing developers to satisfy the Department's loan obligations early and unlock equity from performing

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assets that could be redeployed back into affordable housing. The successful passage of these measures reflected years of advocacy by CCAH and other stakeholders who demonstrated the need for a workable mechanism to free up capital trapped in existing projects and put it back to producing or preserving affordable homes.

When the Department released its proposed guidelines on January 12, 2026, stakeholders across the affordable housing community immediately expressed concerns regarding practicality, predictability, financial feasibility, and alignment with legislative intent. CCAH provided detailed comments and practical recommendations designed to unlock equity, support reinvestment, and increase affordable housing production across California. Unfortunately, the final guidelines released on June 9, 2026 demonstrate that many of these concerns were either inadequately addressed or disregarded altogether. Rather than encouraging reinvestment and accelerating housing production, the guidelines impose restrictions that will substantially diminish participation and financial feasibility.

The most significant concerns relate to Sections 109 and 113. The statutory purpose of the legislation was straightforward: provide a mechanism through which borrowers could satisfy the Department's outstanding obligations and gain access to accrued project equity for future affordable housing investment. The Department's treatment of owner-earned equity and the seemingly arbitrary look-back dates appear to punish sponsors who took actions to ensure their projects remained affordable. Additionally, the fees and charges outlined in Section 113 give us pause. For example, Section 113, Part (b) bullet (4) reads "For Restructurings that involve Extracted Equity, a $75,000.00 fee shall apply in addition to any applicable fee(s) as specified in Section 109". When added on top of a taking of 50% of an owner's earned equity, such a large fee feels punitive and inconsistent with the Legislature's stated intent to encourage reinvestment in affordable housing.

Nothing within AB 130 or SB 686 grants the Department continuing authority to dictate how earned equity must be used once obligations owed to the State have been satisfied, apart from the requirement that the owner must redeploy the extracted equity into affordable housing and providing certain examples of the forms such redeployment might take. Yet the final guidelines seek to regulate and control the disposition of privately held capital generated through years of ownership, operation, compliance, investment, and risk by imposing additional restrictions or approvals on the uses, in some cases limiting such uses to projects funded by the Department and granting the Department unfettered discretion to approve or disapprove uses. Administrative agencies possess only those powers delegated by statute, and actions imposing substantive requirements not authorized by the

Legislature are vulnerable to challenge as ultra vires. By transforming a legislative directive intended to unlock equity into a regulatory framework that restricts use, claims ownership of 50 percent of the equity and imposes additional obligations, the Department appears to have exceeded the authority granted by the Legislature. CCAH strongly supports ensuring that equity released through the LPR program benefits affordable housing. Having said that, there is a fundamental distinction between requiring certification that proceeds will be used for affordable housing purposes and asserting authority to dictate the precise manner in which privately owned funds may be deployed. Reasonable certification requirements can satisfy the Legislature's objective without extending Department control over earned equity.

The Department's assertion of continuing control over earned equity also raises significant property-rights concerns. The equity generated within these developments is a private property interest that exists only because affordable housing providers successfully operated these properties over many years. Once obligations to the Department have been satisfied, restrictions on the use or disposition of that equity raise serious concerns regarding interference with vested property rights. The organizations considering participation in the LPR program seek to recycle equity from performing developments into other affordable projects. By reducing the value, flexibility, and utility of that equity, the final guidelines risk making participation economically unattractive and undermining the objectives AB 130 and SB 686 were enacted to achieve. To the extent participation in the restructuring program is conditioned on surrendering the practical use, flexibility, or economic value of earned equity, the Department risks creating circumstances that may be viewed at best as an equity interest in the project severely limiting the available financing options and at worst as an unlawful taking of private property without sufficient statutory or constitutional justification.

In a typical LIHTC development, ownership rights, economic benefits, risks, and fiduciary obligations are allocated among legal owners and investment partners through carefully structured partnership agreements. By claiming a share of project equity without assuming corresponding ownership responsibilities or risks, the Department is effectively positioning itself as a beneficiary of project appreciation outside the established ownership structure. This represents a significant departure from traditional affordable housing finance practices and raises legal questions regarding statutory authority, property rights, and partnership law. Further, CCAH is concerned that the requirement regarding priority of the various Department regulatory agreements that will encumber these projects are unclear and potentially unworkable for affordable housing transactions that routinely involve complex capital stacks that depend upon flexibility regarding lien priority and debt structure. Without more clarity and consideration of concerns raised by the financing community, the

Department introduces a financing obstacle that could make participation infeasible for many otherwise qualified projects and frustrates the very transactions the Legislature intended to facilitate.

The concerns identified in this letter raise substantial questions regarding the Department's statutory authority, including whether portions of the guidelines exceed the authority delegated by the Legislature, improperly impair vested private property rights, and create constitutional concerns related to the taking of private property interests without sufficient legal justification. Accordingly, CCAH respectfully requests that the Department reopen discussions regarding the final guidelines and revise those provisions that exceed legislative intent or create unnecessary barriers to participation.

CCAH remains prepared to work collaboratively with the Department to establish guidelines that faithfully implement legislative intent, respect private property rights, and advance affordable housing production. Should the Department decline to address our concerns, CCAH and its members will evaluate all available administrative, legislative, and judicial remedies. Nothing contained in this letter should be construed as a waiver of any rights, claims, causes of action, or legal remedies available to CCAH or its members, all of which are expressly reserved. We respectfully request a written response within 30 days and look forward to working with the Department to implement timely solutions that preserve the effectiveness of the LPR program.

Respectfully,

Jenna Abbott

Jenna Abbott
Executive Director, California Council for Affordable Housing

CC. Senator Eloise Gomez Reyes
Jesse Arreguin, California State Senate Housing Committee Chairman
Jesse Gabriel, California State Assembly Budget Committee Chairman
Matt Haney, California State Assembly Housing Committee Chairman
John Laird, California State Senate Budget & Fiscal Review Committee
Myles White, Deputy Legislative Affairs Secretary for Governor Gavin Newsom
Tomiquia Moss, Secretary California Housing & Homelessness Agency
Christina Mun, Deputy Secretary California Housing & Homelessness Agency
Jonathan Klein, Executive Director Housing Development & Finance Committee
Lisa Engel, Chief Consultant, California State Assembly Housing Committee
Alison Hughes, Chief Consultant California State Senate Housing Committee
Katie Kolitsos, California Assembly, Office of Speaker Robert Rivas
Nicole Restmeyer, California Senate Housing Committee Consultant