Immediate Actions Necessary to Mitigate the Economic Impacts of COVID-19 on Affordable Housing Developments (4/8/20)

The Newsom Administration has taken decisive action in the last few weeks to respond to COVID-19, and we thank you for the initial, critically important steps that have been taken to prepare California for this crisis.

Lower-income Californians are likely to bear the brunt of the economic impacts of this expanding crisis—with significant numbers of workers expected to lose their jobs and find themselves unable to pay for rent, health care, and other necessities. COVID-19 also creates an unprecedented threat to the State's existing affordable housing supply. We must work together—housing providers, local, state, and federal governments—to protect affordable housing and lower-income tenants. In the near term, affordable housing properties need to be able to weather the shock of lost income due to the inability of tenants to pay rent. Most properties are structured in ways that could help them survive a few months, but there are several things the state could do to help the impacted affordable housing properties operate in the near term and potentially avoid default over the next 12 months.

<u>Immediate Actions</u>:

1. **Forbearance/Mortgage Payments:**
    a. Defer/forbear on annual HCD hard debt payments, as well as any services/annual loan fees for HCD and CalHFA loans that would otherwise be due in 2020.
    b. Allow deferral/forbearance on CalHFA mortgage payments, without late fees or penalties, for a period of up to 6 months. Provide the option to structure the deferral/forbearance to either i) allow deferred amounts to be repaid, without interest for up to 24 months, beginning 2021; or ii) allow the deferred amount to be added to principle and re-amortized to reflect a minimum debt service coverage of 1.25.
    c. Encourage all lenders to allow forbearance on mortgage payments for affordable housing developments.
    d. In addition, but also a viable alternative to forbearance in many cases, provide the option to either i) refinance CalHFA loans without prepayment penalty to reduce debt service; ii) modify the existing loan terms to reduce interest rates to current rates; or iii) make adjustments in amortization schedules or lengthening loan terms to temporarily reduce payments of interest and principal.

2. **Cash Flow Distributions and Residual Receipts Payments**
    a. Allow residual receipts from 2019 cash flow that would otherwise be paid toward residual receipt loans with public lenders be deposited into a property-held operating reserve account to be used as a priority source of funds to cover any operating deficits.
    b. Any amount of residual receipts from 2019 that have already been paid/disbursed would be refunded back to the property to be deposited into this operating reserve.

c. After the end of 2021, any funds remaining and in excess of initial capitalized reserve balances would be distributed to residual receipt lenders in proportion to the amounts that would have otherwise been paid.
d. Any loans to fund operating deficits, to the extent that those funds are paying for eligible operating costs as defined by the applicable program and/or loan documents, will be repaid as a priority use of excess cash flow prior to the repayment of any residual receipts.

3. **Operating/Replacement Reserves:**
   a. Order HCD and CalHFA to allow operating reserves and reserves for replacement to be used for operating deficits caused by tenant losses of income due to the COVID-19 pandemic. The allocation of future excess cash flow would be prioritized toward replenishing those reserves to their required levels.
   b. Acknowledging the high frequency of requests for reserve draws and the immediate need for cash available, expedite requests or include a waiver that lets owners draw down reserves without advance permission and later document the need as part of annual reporting by showing negative cash flow.
   c. Deferral, suspension, or reductions in required contributions to replacement or other required reserves.

4. **Electronic Filing/Processing:**
   a. Allow notaries to rely on video review where the person could be seen by the notary, and the notary could examine the form of identification and copy the information in the notary book and waive the thumbprint requirement for the duration of the emergency.
   b. Requiring acceptance of electronic signatures and pdfs meeting Uniform Electronic Transaction Act (UETA) standards for all filings and documentation with the Secretary of State; and all applications, Standard Agreements, loan documents, other agreements, and certifications with State Agencies, including HCD, CalHFA, TCAC, and CDLAC.
   c. Utilize the HCD Standard Estoppel that was approved and developed in 2017 and upload to the HCD website as a fillable form.
   d. Direct HCD and other state entities to email documents to borrowers for electronic signatures as opposed to having to send everything to title companies for signature in the title company office. They can check the pdf signed version like the other parties.
   e. Direct HCD to create a standard online form for tenant files and require the presence of documentation under penalty of perjury so that the supporting documents can be scanned within a 90-day timeframe.

5. **Compliance/Inspections**
   a. Limit scope or substitute owner certifications to minimize third party inspections for construction draws, capital reserves releases or other lender/investor actions.
   b. Accommodate delays and best efforts to meet regulatory compliance and reporting requirements due to limits on resident contacts and staff workloads during this health emergency.
   c. Create a “lead inspector” that spans multiple agencies and funding sources to streamline inspections, reduce risk to the health of inspectors and tenants, and minimize costs in staff time to organize and coordinate site visits multiple times per year, per site given that most affordable housing projects average up to six funding sources.

d. Waive requirements to provide Conditions Need Assessments or Physical Needs Assessments on properties for 2020, unless required in connection with a capital transaction.

Long-term Considerations:

As the Administration and Legislature contemplate long-term recovery measures for California, we urge you to maintain your commitment to lower-income families and their housing needs. We will provide more detailed recommendations as the scope of the crisis becomes understood, but we want to draw your early attention to these two items:

1. **Rent Payment Assistance:** The Governor, the courts, and many local governments have taken action to limit residential and commercial evictions during the current crisis. While these actions are helpful and necessary in the short term, without additional assistance they may simply delay evictions given that the capacity of lower-income households that have lost income to recover and repay back rent will be limited. Lower-income individuals and families living in market-rate housing impacted by a loss of income will need a simple and easy way of qualifying for limited-term rent payment assistance. In addition, affordable housing developments operating without existing rental subsidies will need access to direct, limited-term subsidies to keep them at break-even cash flow, provided they forgive unpaid rents from COVID-affected tenants during the time of assistance.
2. **Continued Investment in Affordable Housing:** This is a crucial time to continue investment in affordable housing development. During economic downturns, it is mostly through counter-cyclical public investments like this that housing is built, keeping the construction industry going while providing tens of thousands of critically needed jobs. In addition to its role in fighting COVID-19, affordable housing reduces strain on existing safety net programs by freeing up resources for other personal expenses such as medical bills and childcare to help residents weather this crisis.

Thank you for your consideration of these critical elements of the state's response to COVID-19. Your actions can address urgent, growing concerns about current affordable housing production—while promoting ongoing development of the affordable homes Californians will need, during and after this crisis.