



**NO PLACE LIKE HOME PROGRAM  
QUESTIONS AND ANSWERS  
REQUIREMENTS, LEGAL STRUCTURE & DOCUMENTATION  
as of March 13, 2020**

The No Place Like Home (NPLH) Program serves adults with serious mental illness and children with severe emotional disorders and their families and persons who require or are at risk of requiring acute psychiatric inpatient care, residential treatment, or outpatient crisis intervention because of a mental disorder with symptoms of psychosis, suicidality or violence, and who are homeless, chronically homeless, or at risk of chronic homelessness (Target Population). As a County with five percent or more of the state's homeless population, Los Angeles County, through the Los Angeles County Development Authority (LACDA) and the Los Angeles County Department of Mental Health (DMH), has been designated by the California Department of Housing and Community Development (HCD) to receive and administer its own allocation of NPLH funds under an HCD-approved method of distribution.

The below questions were collected as part of the initial NPLH construction loan closing discussions between LACDA staff and awardees of NPLH Funds (Borrowers) and their financial partners. The purpose of this document is to answer these questions and provide clarity and guidance ahead of the forthcoming NPLH loan documents. This document is not meant to modify the NPLH loan documents or the NPLH requirements. The California Department of Housing and Community Development (HCD) has also reviewed this document and provided input.

**I. Float-Up and Change in Tenant Population – NPLH-Assisted Units**

**Q1. In the case of a loss in operating subsidy, is an increase in the maximum allowable rents (aka a float-up provision) and a change in tenant population allowed?**

A: An increase in the maximum allowable rents and a change in population for the NPLH-Assisted units may be requested by the Borrower for approval as outlined below.

Notification Requirements:

Should a loss of operating subsidy occur or be expected to occur, the Borrower must notify the LACDA within five (5) working days and provide the reasons for the loss of the subsidy.



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If an increase in the maximum allowable rents on the NPLH-Assisted units will be requested as a way to address the loss of subsidy, the Borrower is required to provide written notice to the LACDA no less than thirteen (13) months prior to any proposed rent increase, as the LACDA is required to provide twelve (12) months of advance notice to HCD.

Rent Increase Considerations:

- Thirteen (13) months following a written request to the LACDA by Borrower and subject to the approval of the LACDA, HCD, and DMH, the rents for the NPLH-assisted units may increase up to a maximum of 30% of 50% of the Area Median Income (AMI). A request for a rent increase will not be considered if the loss of operating subsidy is due to acts or negligence of the Borrower or parties related thereto.
- The one-year Transition Reserve for the NPLH-assisted units (See Section IV below) must be fully depleted prior to the implementation of any rent increase for any of the NPLH-assisted units. The Borrower shall have made its best efforts to secure other rental or operating subsidies.

Considerations for Change in Target Population:

- Regardless of any approved rent increases, the NPLH-assisted units must at all times house a member of the Target Population (as defined in the introductory paragraph to this document). **NPLH-assisted units may not at any time house any population outside of the Target Population.**
- If a rent increase is approved for the NPLH-assisted units and a change within the Target Population is necessary to rent to tenants who can afford the increased rent, a change of tenant population within the Target Population can be requested in writing.
- Examples of Allowable and Unallowable Changes:
  1. A change from a chronically homeless member of the Target Population to an at-risk of chronic homelessness member of the Target Population IS allowed.
  2. A change from a chronically homeless member of the Target Population to a low-income general population is NOT allowed.
- If the change in tenant population and/or approval to increase rents will involve the displacement of current NPLH residents, the Borrower's request for a change of population must include a transition plan identifying, at a minimum:
  1. Other permanent housing options for the current NPLH population,
  2. How the current NPLH population will be assisted with accessing these other permanent housing options,
  3. The proposed NPLH Target Population that the Borrower wants to transition in to the NPLH-assisted units.

**Q2. In the case of a foreclosure due to a loss of operating subsidy, is an increase in the maximum allowable rents (aka a float-up provision) and a change in tenant population allowed?**

A: Yes, with caveats.

If a project is in default and facing a potential foreclosure, the LACDA and HCD must be notified. If the nature of the default is one in which an adjustment in the maximum allowable rents or Target Population can remedy the default, adjustments may be approved by HCD and the LACDA, as discussed in Q1.

Caveat: We understand that each potential loan default situation is different and the causes for loan default may involve other factors besides the loss of an operating subsidy. Therefore, no assurance can be made that the LACDA, HCD, and DMH will agree to changes that another financial partner may require, or that the Borrower may request to remedy a loan default and avoid a foreclosure.

In addition, note that the NPLH affordability covenants are intended to survive foreclosure by a project lender. Post foreclosure and transfer of the ownership of the project to a new owner, any adjustments in the maximum allowable rents and Target Population must be approved by the LACDA, HCD, and DMH.

**Q3. In the case of a foreclosure due to a reason other than a loss of subsidy, is an increase in the maximum allowable rents (aka a float-up provision) and a change in tenant population allowed?**

A: Rent increases and/or a change in the Target Population are only permitted to the minimum extent required for financial feasibility as determined by the LACDA, HCD, and DMH. The project must clearly demonstrate a financial hardship that threatens the viability and ongoing operations of the housing development in order for any rent increase to be considered.

**Q4. In the case of a foreclosure, if the NPLH Transition Reserve has not been depleted (or even drawn upon at all), is an increase in the maximum allowable rents (aka a float-up provision) and a change in tenant population allowed?**

A: No.

The NPLH Transition Reserve is required to be fully depleted prior to the implementation of an increase in the maximum allowable rent. Deviations from this requirement may be considered on a case-by-case basis and requires approval by LACDA, HCD and DMH, which approval is not guaranteed.

**Q5. Could foreclosure or the threat of foreclosure be the triggering event to allow an increase in the maximum allowable rents (aka a float-up provision) and/or a change in tenant population?**

A: No.

The NPLH Transition Reserve is required to be fully depleted prior to implementing any approved increase in the maximum allowable rent or a change in the NPLH Target Population (as described in Q1). Deviations from this requirement may be considered on a case-by-case basis and requires approval by LACDA, HCD and DMH, of which approval is not guaranteed.

**Q6. If there is a reduction (and not a full depletion) in the NPLH Transition Reserve, would an increase in the maximum allowable rents (aka a float-up provision) and/or a change in tenant population still be allowed?**

A: No. See additional details noted in the question responses above.

## **II. Ground Leases**

**Q7. Are properties with a ground lease required to abide by the Uniform Multifamily Regulations (UMR) as described in the NPLH Guidelines (Section 202 (d))? In particular, the UMR (25 CCR Section 8316 Leasehold Security) includes requirements that:**

- **The Regulatory Agreement must be recorded against BOTH the Sponsor's interest in the Project and the fee interest in the land; OR**
- **If the Regulatory Agreement it is not recorded against the fee interest, the lease term must extend at least 90 years following the recording of the NPLH documents; and**
- **Must not have any other mortgages or indebtedness on the fee interest.**

A: The UMRs referenced in Section 202 (d) of the NPLH Guidelines do not apply to the LACDA as an Alternative Process County. However, if the NPLH-funded project has other HCD financing sources, these UMR provisions will apply unless specifically exempted in that other program's guidelines or regulations.

Further, LACDA will evaluate the suitability of any ground lease property in its discretion and may include in its analysis the factors set forth in the UMR.

## **III. NPLH Regulatory Agreement (Covenants, Conditions, and Restrictions) & Subordination**

**Q8. Will the NPLH Regulatory Agreement be recorded as a lien against the project in first position?**

A: Yes.

**The NPLH Regulatory Agreement will only govern the NPLH units. Units assisted by any other LACDA funding source(s) will be governed by a separate regulatory agreement.**

LACDA is willing to subordinate the regulatory agreement associated with other LACDA funding sources. The NPLH Regulatory Agreement will remain in first position over all other financing-related covenants, financial agreements, other financing obtained by Borrower, or any other matters of record on the property for the fifty-five (55) or fifty-seven (57) year period of affordability.

**Q9. Will the LACDA subordinate the NPLH Deed of Trust to the senior commercial lender?**

A: Yes.

The LACDA will subordinate its NPLH Deed of Trust and associated loan documents to the senior lender(s) and will execute a Subordination Agreement with the senior lender(s) in a form and substance acceptable to the LACDA. The Subordination Agreement will expressly exclude from subordination the NPLH Regulatory Agreement and its terms and conditions.

**Q10. Will the senior NPLH Regulatory Agreement contain any items that are not strictly related to the affordability restrictions and tenant criteria?**

A: Yes. The LACDA is required to abide by the requirements of the Standard Agreement between HCD and the LACDA which requires the following items to be addressed in the NPLH Regulatory Agreement (as these items concern the NPLH-Assisted units):

- affordability of the NPLH-assisted units;
- Target Population;
- income limits;
- reserve provisions related to NPLH Transition Reserve;
- audit and other financial control requirements;
- project maintenance (although focused on the NPLH assisted units, portions of a project that are not exclusively part of the NPLH assisted units may be covered);and
- insurance.

## **IV. NPLH Transition Reserve**

**Q11. What is the NPLH Transition Reserve?**

A. The NPLH Transition Reserve is set aside per the requirements of the NPLH NOFA in an amount sufficient to prevent rent increases on the NPLH-assisted units for one year (12 months) following a loss of operating subsidy.

The NPLH Transition Reserve ensures that the residents of the NPLH-assisted units are given an extended period of time to continue to rent at an affordable rental rate.

**Q12. Where is the NPLH Transition Reserve held?**

A: The NPLH Transition Reserve can be held by the senior lender or in a third-party bank account established by the Borrower. The LACDA will require the Borrower to execute a form of Deposit

Account Control Agreement to grant the LACDA a security interest in the NPLH Transition Reserve. The NPLH Transition Reserve shall remain with the project regardless of sale or transfer of ownership. In no event shall any NPLH reserves be used to fund limited partner exit costs, repay any indebtedness of the owner and shall only be used for the support of the financial feasibility of the NPLH assisted units if approved operating subsidies for the NPLH assisted units are lost through no actions or negligence of the owner or related parties.

Written approval from the LACDA is required prior to any withdrawal from the NPLH Transition Reserve.

**Q13. Does the NPLH Transition Reserve need to be held in a separate, segregated account?**

A: Yes. The NPLH Transition Reserve will be required to be held in a separate, segregated bank account, and the accountholder will maintain accounting records in accordance with generally accepted accounting principles.

**Q14. Will the NPLH Transition Reserve survive foreclosure and stay with the project even after a change in ownership by foreclosure?**

A: Yes. The NPLH Transition Reserve will stay with the NPLH project for the full affordability term of fifty-five (55) or fifty-seven (57) years.

**Q15. Will the NPLH Transition Reserve stay with the project after a change in the limited partner?**

A: Yes.

**Q16. How should the NPLH Transition Reserve be sized?**

A: The NPLH Transition Reserve will be sized to prevent rent increases on the NPLH-assisted units for one year (12 months) following a loss of operating subsidy. This will be based on one-year (12 months) of break-even operations (covering operating expense and, if applicable, debt service) for the NPLH-assisted units in year ten (10).

**Q17. Can the NPLH Transition Reserve be funded from project cash flow?**

A: Yes. However, note that:

- The project must capitalize a portion of the required NPLH Transition Reserve.

- If a portion of the NPLH Transition Reserve will be cash-flow funded, the reserve must be fully funded by year ten (10) of project operations.
- The funding the NPLH Transition Reserve will take precedent over the Flexible Operating Reserve (defined in Section V below).

**Q18. What happens to the NPLH Transition Reserve at the end of the NPLH Loan term?**

A: The NPLH Transition Reserve is required to remain with the project as long as the project serves the Target Population. If the project no longer serves the Target Population, the reserve is disbursed to the LACDA.

## **V. NPLH Flexible Operating Reserve**

**Q19. What is the NPLH Flexible Operating Reserve?**

A: The NPLH Flexible Operating Reserve is a cash-flow funded reserve established to provide a reserve for shortfalls in operations, supportive services, furnishings, or replacement reserves associated with the NPLH units. In lieu of a residual receipts payment on the NPLH loan, all NPLH projects will have a NPLH Flexible Operating Reserve.

This reserve is separate from the NPLH Transition Reserve and the NPLH Transition Reserve, if cash-flow funded, takes priority over the funding of the NPLH Transition Reserve.

**Q20. How is the NPLH Flexible Operating Reserve funded?**

A: The NPLH Flexible Operating Reserve is funded by cash flow. It is a priority item before the payment of residual receipts.

**Q21. How is the NPLH Flexible Operating Reserve sized?**

A: The NPLH Flexible Operating Reserve will be based on a percentage of net cash flow after operating expenses, debt service, partnership management fees, deferred developer fees and, if applicable, NPLH Transition Reserve deposits are deducted.

The percentage of net cash flow is sized to the hypothetical pro-rata residual receipts distribution that would be due to LACDA, if residual receipts were being disbursed for the NPLH Loan.

**Q22. Will the NPLH Flexible Operating Reserve be held in a Borrower account?**

A: Yes. The NPLH Flexible Operating Reserve can be held by the senior lender or a third-party bank account established by the Borrower. This reserve must be held in a segregated bank account, and the accountholder will maintain accounting records in accordance with generally accepted accounting principles. The LACDA will require the Borrower to execute a form of Deposit Account Control Agreement to grant the LACDA a security interest in the account in which the NPLH Flexible Operating Reserve is deposited.

The NPLH Flexible Operating Reserve will stay with the NPLH project for the full affordability term of fifty-five (55) or fifty-seven (57) years.

**Q23. Will there be a cap on the amount of the NPLH Flexible Operating Reserve?**

A: This will be determined on a project-by-project basis based on the project's financial feasibility and specific need.

**Q24. What can the NPLH Flexible Operating Reserve be used for?**

A: The use of the NPLH Flexible Operating Reserve will be determined on a project-by-project basis by the LACDA based on the project's financial feasibility and the specific needs of the NPLH assisted units. Uses include shortfalls in operating reserves, supportive service reserves, furniture reserves and/or replacement reserves attributable to the NPLH assisted units.

**Q25. What happens to the NPLH Flexible Operating Reserve at the end of the NPLH Loan term?**

A: The NPLH Flexible Operating Reserve is required to remain with the project as long as the project serves the Target Population. If at any time the project no longer serves the Target Population, the reserve is disbursed to the LACDA.

## **VI. Residual Receipts Payments to the LACDA for NPLH Loans**

**Q26. Will there be residual receipts payments to LACDA?**

A: Payments are not required to be made to the LACDA during the term of the NPLH loan. A lump sum payment of the NPLH loan principal will be due to the LACDA at the end of the NPLH loan term.

## **VII. Other**

### **Q27. What rent and income schedule will be used relative to the NPLH-assisted units?**

- A. The rent and income limits for the NPLH-assisted units will be based on the schedule published by the California Tax Credit Allocation Committee (CTCAC).

### **Q28. What new LACDA loan documentation will be required under the NPLH Loan Program?**

A: The LACDA's NPLH loan documents will include:

1. NPLH Loan Agreement,
2. NPLH Regulatory Agreement,
3. NPLH Deed of Trust,
4. NPLH Promissory Note,
5. NPLH Sponsor Operating Guaranty, and
6. Deposit Account Control Agreement(s), which will govern the NPLH-related reserve account(s).

### **Q29. What is the NPLH loan default interest rate since the basic annual interest rate is zero percent?**

A: The default interest rate is ten percent (10%).

### **Q30. What Regulations will the LACDA follow for its NPLH Loan Program?**

A: The LACDA, as a designated representative of an Alternative Process County, will abide by the published HCD NPLH Guidelines, Standard Agreement between HCD and the LACDA, the LACDA NPLH NOFAs, and the LACDA's NPLH Underwriting Guidelines and policies, as they may be amended, replaced, or otherwise changed from time to time.

**-End-**