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GOVERNMENT CODE - GOV

TITLE 6. DISTRICTS [58000 - 62464] (Title 6 added by Stats. 1951, Ch. 331.)

DIVISION 4. Community Revitalization and Investment Authorities [62000 - 62208] (Division 4 added by Stats. 2015, Ch. 319, Sec. 2.)

PART 2. Housing [62100 - 62123] (Part 2 added by Stats. 2015, Ch. 319, Sec. 2.)

CHAPTER 1. Housing for Persons of Low and Moderate Income [62100 - 62112] (Chapter 1 added by Stats. 2015, Ch. 319, Sec. 2.)

62100. (a) Not less than 25 percent of all taxes that are allocated to the authority from any participating entity pursuant to Section 62005 shall be deposited into a separate Low and Moderate Income Housing Fund pursuant to Section 62101 and used by the authority for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined by the following sections of the Health and Safety Code: Section 50052.5, to persons and families of low or moderate income, as defined in Section 50093, lower income households, as defined by Section 50079.5, very low income households, as defined in Section 50105, and extremely low income households, as defined by Section 50106, that is occupied by these persons and families unless the authority makes a finding that combining funding received under this program with other funding for the same purpose shall reduce administrative costs or expedite the construction of affordable housing. If the authority makes such a finding, then (1) an authority may transfer funding from the program adopted pursuant to subdivision (c) of Section 62003 to the housing authority within the territorial jurisdiction of the local jurisdiction that created the authority or to the entity that received the housing assets of the former redevelopment agency pursuant to Section 34176 of the Health and Safety Code or to a private nonprofit housing developer, and (2) Section 34176.1 of the Health and Safety Code shall not apply to funds transferred. Funding shall be spent within the plan area in which the funds were generated. Any recipient of funds transferred pursuant to this subdivision shall comply with all applicable provisions of this part.

(b) In carrying out the purposes of this section, the authority may exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low- and moderate-income persons or families, including the following:

(1) Acquire real property or building sites subject to Section 62112.

(2) (A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (ii) the authority requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 62101.

(B) If the newly constructed or rehabilitated housing units are part of a larger project and the agency improves or pays for onsite or offsite improvements pursuant to the authority in this subdivision, the authority shall pay only a portion of the total cost of the onsite or offsite improvement. The maximum percentage of the total cost of the improvement paid for by the authority shall be determined by dividing the number of housing units that are affordable to low- or moderate-income persons by the total number of housing units, if the project is a housing project, or by dividing the cost of the affordable housing units by the total cost of the project, if the project is not a housing project.

(3) Donate real property to private or public persons or entities.

(4) Finance insurance premiums necessary for the provision of insurance during the construction or rehabilitation of properties that are administered by governmental entities or nonprofit organizations to provide housing for lower income households, as defined

in Section 50079.5 of the Health and Safety Code, including rental properties, emergency shelters, transitional housing, or special residential care facilities.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

(8) Provide subsidies to, or for the benefit of, extremely low income households, as defined by Section 50106 of the Health and Safety Code, very low income households, as defined by Section 50105 of the Health and Safety Code, lower income households, as defined by Section 50079.5 of the Health and Safety Code, or persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, to the extent those households cannot obtain housing at affordable costs on the open market. Housing units available on the open market are those units developed without direct government subsidies.

(9) Develop plans, pay principal and interest on bonds, loans, advances, or other indebtedness, or pay financing or carrying charges.

(10) Maintain the community's supply of mobilehomes.

(11) Preserve the availability to lower income households of affordable housing units in housing developments that are assisted or subsidized by public entities and that are threatened with imminent conversion to market rates.

(c) The authority may use these funds to meet, in whole or in part, the replacement housing provisions in Section 62120. However, this section shall not be construed as limiting in any way the requirements of that section.

(d) The authority shall use these funds inside the plan area.

(e) The Legislature finds and declares that expenditures or obligations incurred by the authority pursuant to this section shall constitute an indebtedness of the plan area.

(f) (1) (A) An action to compel compliance with the requirement of this section to deposit not less than 25 percent of all taxes that are allocated to the authority pursuant to Section 62005 in the Low and Moderate Income Housing Fund shall be commenced within 10 years of the alleged violation. A cause of action for a violation accrues on the last day of the fiscal year in which the funds were required to be deposited in the Low and Moderate Income Housing Fund.

(B) An action to compel compliance with the requirement of this section that money deposited in the Low and Moderate Income Housing Fund be used by the agency for purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost shall be commenced within 10 years of the alleged violation. A cause of action for a violation accrues on the date of the actual expenditure of the funds.

(C) An agency found to have deposited less into the Low and Moderate Income Housing Fund than mandated by Section 62101 or to have spent money from the Low and Moderate Income Housing Fund for purposes other than increasing, improving, and preserving the community's supply of low- and moderate-income housing, as mandated by this section, shall repay the funds with interest in one lump sum pursuant to Section 970.4 or 970.5 or may do either of the following:

(i) Petition the court under Section 970.6 for repayment in installments.

(ii) Repay the portion of the judgment due to the Low and Moderate Income Housing Fund in equal installments over a period of five years following the judgment.

(2) Repayment shall not be made from the funds required to be set aside or used for low- and moderate-income housing pursuant to this section.

(3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of paragraph (1), all costs, including reasonable attorney's fees if included in the judgment, are due and shall be paid upon entry of judgment or order.

(4) Except as otherwise provided in this subdivision, Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 for the enforcement of a judgment against a local public entity applies to a judgment against a local public entity that violates this section.

(5) This subdivision applies to actions filed on and after January 1, 2016.

(6) The limitations period specified in subparagraphs (A) and (B) of paragraph (1) does not apply to a cause of action brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62101. (a) The funds that are required by Section 62100 or 62103 to be used for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the authority for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the authority.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The authority shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs that may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the authority that are directly related to the programs and activities authorized under subdivision (e) of Section 62100 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the authority's staff or for services provided through interagency agreements, and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project that are authorized under subdivision (e) of Section 62100 and that are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund. Except to the extent that a longer period of time may be required by other provisions of law, the authority shall require that housing units subject to this subdivision shall remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the authority may replace rental units with equally affordable and comparable rental units in another location within the community if (i) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced, and (ii) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the authority may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the authority and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the authority shall be counted towards the agency's obligations under Section 62102.

(C) Fifteen years for mutual self-help housing units that are occupied by and affordable to very low and low-income households. However, the authority may permit sales of mutual self-help housing units prior to expiration of the 15-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that (i) protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy, and (ii) ensures through a recorded regulatory agreement, deed of trust, or similar recorded instrument that if a mutual self-help housing unit is sold at any time after expiration of the 15-year period and prior to 45 years after the date of recording of the covenants or restrictions required pursuant to paragraph (2), the authority recovers, at a minimum, its original principal from the Low and Moderate Income Housing Fund from the proceeds of the sale and deposits those funds into the Low and Moderate Income Housing Fund. The remainder of the excess proceeds of the sale not retained by the seller shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. For the purposes of this subparagraph, "mutual self-help housing unit" means an owner-occupied housing unit for which persons and

families of very low and low income contribute no fewer than 500 hours of their own labor in individual or group efforts to provide a decent, safe, and sanitary ownership housing unit for themselves, their families, and others authorized to occupy that unit. This subparagraph shall not preclude the authority and the developer of the mutual self-help housing units from agreeing to 45-year deed restrictions.

(2) If land on which those dwelling units are located is deleted from the plan area, the authority shall continue to require that those units remain affordable as specified in this subdivision.

(3) The authority shall require the recording in the office of the county recorder of the following documents:

(A) The covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. The authority shall obtain and maintain a copy of the recorded covenants or restrictions for not less than the life of the covenant or restriction.

(B) For all new or substantially rehabilitated units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund, a separate document called "Notice of Affordability Restrictions on Transfer of Property," set forth in 14-point type or larger. This document shall contain all of the following information:

(i) A recitation of the affordability covenants or restrictions. The document recorded under this subparagraph shall be recorded concurrently with the covenants or restrictions recorded under subparagraph (A), the recitation of the affordability covenants or restrictions shall also reference the concurrently recorded document.

(ii) The date the covenants or restrictions expire.

(iii) The street address of the property, including, if applicable, the unit number, unless the property is used to confidentially house victims of domestic violence.

(iv) The assessor's parcel number for the property.

(v) The legal description of the property.

(4) The authority shall require the recording of the document required under subparagraph (B) of paragraph (3) not more than 30 days after the date of recordation of the covenants or restrictions required under subparagraph (A) of paragraph (3).

(5) The county recorder shall index the documents required to be recorded under paragraph (3) by the authority and current owner.

(6) Notwithstanding Section 27383, a county recorder may charge all authorized recording fees to any party, including a public agency, for recording the document specified in subparagraph (B) of paragraph (3).

(7) Notwithstanding any other law, the covenants or restrictions implementing this subdivision shall run with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:

(A) The authority.

(B) The city or county that established the authority.

(C) A resident of a unit subject to this subdivision.

(D) A residents' association with members who reside in units subject to this subdivision.

(E) A former resident of a unit subject to this subdivision who last resided in that unit.

(F) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this subdivision, if the applicant conforms to all of the following:

(i) Is of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(ii) Is able and willing to occupy that particular unit.

(iii) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this subdivision.

(G) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093, and who is able and willing to occupy a unit subject to this subdivision.

(8) A dwelling unit shall not be counted as satisfying the affordable housing requirements of this part, unless covenants for that dwelling unit are recorded in compliance with subparagraph (A) of paragraph (3).

(9) Failure to comply with the requirements of subparagraph (B) of paragraph (3) shall not invalidate any covenants or restrictions recorded pursuant to subparagraph (A) of paragraph (3).

(g) "Housing," as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912 of the Health and Safety Code. The definitions of "lower income households," "very low income households," and "extremely low income households" in Sections 50079.5, 50105, and 50106 of the Health and Safety Code shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(h) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 62100, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including extremely low and very low income households, for the longest feasible time, but not less than 55 years, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the authority shall require that the units remain affordable to, and occupied by, persons and families of low- and moderate-income and extremely low and very low income households for the longest feasible time, but not less than 55 years.

(i) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed 50 percent of the cost of producing the units, the authority shall find, based on substantial evidence, that the use of the funds is necessary because the authority or owner of the units has made a good faith attempt but has been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62102. (a) Except as specified in subdivision (d), each authority shall expend over each 10-year period of the community revitalization plan the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low income and housing for persons of very low income in at least the same proportion as the total number of housing units needed that each of those income groups bears to the total number of units needed for persons of moderate, low, and very low income within the community, as those needs have been determined for the community pursuant to Section 65584. In determining compliance with this obligation, the authority may adjust the proportion by subtracting from the need identified for each income category, the number of units for persons of that income category that are newly constructed over the duration of the implementation plan with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of the income category for at least 55 years for rental housing and 45 years for ownership housing, except that in making an adjustment the agency may not subtract units developed pursuant to a replacement housing obligation under state or federal law.

(b) Each authority shall expend over the duration of each plan, the moneys in the Low and Moderate Income Housing Fund to assist housing that is available to all persons regardless of age in at least the same proportion as the number of low-income households with a member under 65 years of age bears to the total number of low-income households of the community as reported in the most recent census of the United States Census Bureau.

(c) An authority that has deposited in the Low and Moderate Income Housing Fund over the first five years of the period of a plan an aggregate that is less than two million dollars (\$2,000,000) shall have an extra five years to meet the requirements of this section.

(d) For the purposes of this section, "locally controlled" means government assistance where the city or county that created the authority or other local government entity has the discretion and the authority to determine the recipient and the amount of the assistance, whether or not the source of the funds or other assistance is from the state or federal government. Examples of locally controlled government assistance include, but are not limited to, the Community Development Block Grant Program (42 U.S.C. Sec. 5301 et seq.) funds allocated to a city or county, the Home Investment Partnership Program (42 U.S.C. Sec. 12721 et seq.) funds allocated to a city or county, fees or funds received by a city or county pursuant to a city or county authorized program, and the waiver or deferral of city or other charges.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62103. Every community revitalization plan shall contain both of the following:

(a) A provision that requires, whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a revitalization project, the authority to, within two years of such destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income an equal number of replacement dwelling units at affordable housing costs,

as defined by Section 50052.5 of the Health and Safety Code, within the territorial jurisdiction of the authority, in accordance with all of the provisions of Sections 62120 and 62120.5.

(b) A provision that prohibits the number of housing units occupied by extremely low, very low-, and low-income households, including the number of bedrooms in those units, at the time the plan is adopted, from being reduced in the plan area during the effective period of the plan.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62104. Programs to assist or develop low- and moderate-income housing pursuant to this part shall be entitled to priority consideration after a program implemented by a housing successor pursuant to Section 34176.1 of the Health and Safety Code for assistance in housing programs administered by the California Housing Finance Agency, the Department of Housing and Community Development, and other state agencies and departments, if those agencies or departments determine that the housing is otherwise eligible for assistance under a particular program.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62105. The same notice requirements as specified in Section 65863.10 shall apply to multifamily rental housing that receives financial assistance pursuant to Sections 62100 and 62101.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62106. Notwithstanding Sections 62100 and 62101, assistance provided by an authority to preserve the availability to lower income households of affordable housing units within the plan area which are assisted or subsidized by public entities and which are threatened with imminent conversion to market rates may be credited and offset against an agency's obligations under Section 62100.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62107. (a) Except as otherwise provided in this subdivision, not later than six months following the close of any fiscal year of an authority in which excess surplus accumulates in the authority's Low and Moderate Income Housing Fund, the authority may adopt a plan pursuant to this section for expenditure of all moneys in the Low and Moderate Income Housing Fund within five years from the end of that fiscal year. The plan may be general and need not be site-specific, but shall include objectives respecting the number and type of housing to be assisted, identification of the entities, which will administer the plan, alternative means of ensuring the affordability of housing units for the longest feasible time, as specified in subdivision (e) of Section 62101 the income groups to be assisted, and a schedule by fiscal year for expenditure of the excess surplus.

(b) The authority shall separately account for any excess surplus accumulated each year either as part of or in addition to a Low and Moderate Income Housing Fund.

(c) If the authority develops a plan for expenditure of excess surplus or other moneys in the Low and Moderate Income Housing Fund, a copy of that plan and any amendments to that plan shall be included in the authority's annual report pursuant to Section 62006.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62108. (a) (1) Upon failure of the authority to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within one year from the date the moneys become excess surplus, as defined in paragraph (1) of subdivision (g), the authority shall do either of the following:

(A) Disburse voluntarily its excess surplus to the county housing authority, a private nonprofit housing developer, or to another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b).

(B) Expend or encumber its excess surplus within two additional years.

(2) If an authority, after three years has elapsed from the date that the moneys become excess surplus, has not expended or encumbered its excess surplus, the authority shall be subject to sanctions pursuant to subdivision (e), until the authority has expended or encumbered its excess surplus plus an additional amount, equal to 50 percent of the amount of the excess surplus that remains at the end of the three-year period. The additional expenditure shall not be from the authority's Low and Moderate Income Housing Fund, but shall be used in a manner that meets all requirements for expenditures from that fund.

(b) The housing authority or other public agency to which the money is transferred shall utilize the moneys for the purposes of, and subject to the same restrictions that are applicable to, the authority under this part, and for that purpose may exercise all of the

powers of a housing authority under Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code to an extent not inconsistent with these limitations.

(c) Notwithstanding Section 34209 of the Health and Safety Code or any other law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county or other public agency may exercise its powers within the territorial jurisdiction of an authority located in that county.

(d) The amount of excess surplus that shall be transferred to the housing authority or other public agency because of a failure of the authority to expend or encumber excess surplus within one year shall be the amount of the excess surplus that is not so expended or encumbered. The housing authority or other public agency to which the moneys are transferred shall expend or encumber these moneys for authorized purposes not later than three years after the date these moneys were transferred from the Low and Moderate Income Housing Fund.

(e) (1) Until a time when the authority has expended or encumbered excess surplus moneys pursuant to subdivision (a), the authority shall be prohibited from encumbering any funds or expending any moneys derived from any source, except that the authority may encumber funds and expend moneys to pay the following obligations, if any, that were incurred by the authority prior to three years from the date the moneys became excess surplus:

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by an authority, whether funded, refunded, assumed, or otherwise, pursuant to subdivision (f) of Section 62003.

(B) Loans or moneys advanced to the authority, including, but not limited to, loans from federal, state, or local agencies, or a private entity.

(C) Contractual obligations which, if breached, could subject the authority to damages or other liabilities or remedies.

(D) Indebtedness incurred pursuant to Section 62100 or 62104.

(E) An amount, to be expended for the operation and administration of the authority, that may not exceed 75 percent of the amount spent for those purposes in the preceding fiscal year.

(2) This subdivision shall not be construed to prohibit the expenditure of excess surplus funds or other funds to meet the requirement in paragraph (2) of subdivision (a) that the agency spend or encumber excess surplus funds, plus an amount equal to 50 percent of excess surplus, prior to spending or encumbering funds for any other purpose.

(f) This section shall not be construed to limit any authority that an authority may have under other provisions of this part to contract with a housing authority, private nonprofit housing developer, or other public agency exercising housing developer powers, for increasing or improving the community's supply of low- and moderate-income housing.

(g) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an authority's Low and Moderate Income Housing Fund that exceeds the greater of one million dollars (\$1,000,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 62100 and 62104 during the authority's preceding four fiscal years. The first fiscal year to be included in this computation is the 2016–17 fiscal year, and the first date on which an excess surplus may exist is July 1, 2021.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Sections 62100 and 62101.

(3) (A) For purposes of determining whether an excess surplus exists, it is the intent of the Legislature to give credit to authorities which convey land for less than fair market value, on which low- and moderate-income housing is built or is to be built if at least 49 percent of the units developed on the land are available at an affordable housing cost to lower income households for at least the time specified in subdivision (e) of Section 62101, and otherwise comply with all of the provisions of this division applicable to expenditures of moneys from a low- and moderate-income housing fund established pursuant to Section 62101. Therefore, for the sole purpose of determining the amount, if any, of an excess surplus, an authority may make the following calculation: if an authority sells, leases, or grants land acquired with moneys from the Low and Moderate Income Housing Fund, established pursuant to Section 62101, for an amount which is below fair market value, and if at least 49 percent of the units constructed or rehabilitated on the land are affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, the difference between the fair market value of the land and the amount the authority receives may be subtracted from the amount of moneys in an agency's Low and Moderate Income Housing Fund.

(B) If taxes that are deposited in the Low and Moderate Income Housing Fund are used as security for bonds or other indebtedness, the proceeds of the bonds or other indebtedness, and income and expenditures related to those proceeds, shall not be counted in determining whether an excess surplus exists. The unspent portion of the proceeds of bonds or other

indebtedness, and income related thereto, shall be excluded from the calculation of the unexpended and unencumbered amount in the Low and Moderate Income Housing Fund when determining whether an excess surplus exists.

(C) This subdivision shall not be construed to restrict the authority of an authority provided in any other provision of this part to expend funds from the Low and Moderate Income Housing Fund.

(D) The Department of Housing and Community Development shall develop and periodically revise the methodology to be used in the calculation of excess surplus as required by this section. The director shall appoint an advisory committee to advise in the development of this methodology. The advisory committee shall include department staff, affordable housing advocates, and representatives of the housing successors of former redevelopment agencies, the League of California Cities, the California Society of Certified Public Accountants, the Controller, and any other authorities or persons interested in the field that the director deems necessary and appropriate.

(h) Communities in which an agency has disbursed excess surplus funds pursuant to this section shall not disapprove a low- or moderate-income housing project funded in whole or in part by the excess surplus funds if the project is consistent with applicable building codes and the land use designation specified in any element of the general plan as it existed on the date the application was deemed complete. A local agency may require compliance with local development standards and policies appropriate to and consistent with meeting the quantified objectives relative to the development of housing, as required in housing elements of the community pursuant to subdivision (b) of Section 65583.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62109. (a) Notwithstanding Sections 50079.5, 50093, and 50105 of the Health and Safety Code, for purposes of providing assistance to mortgagors participating in a homeownership residential mortgage revenue bond program pursuant to Section 33750 of the Health and Safety Code, or a home financing program pursuant to Section 52020 of the Health and Safety Code, or a California Housing Finance Agency home financing program, "area median income" means the highest of the following:

(1) Statewide median household income.

(2) Countywide median household income.

(3) Median family income for the area, as determined by the United States Department of Housing and Urban Development with respect to either a standard metropolitan statistical area or an area outside of a standard metropolitan statistical area.

(b) To the extent that any portion of the Low and Moderate Income Housing Fund is expended to provide assistance to mortgagors participating in programs whose income exceeds that of persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, the authority shall, within two years, expend or enter into a legally enforceable agreement to expend twice that sum exclusively to increase and improve the community's supply of housing available at an affordable housing cost, as defined in Section 50052.5, to lower income households, as defined in Section 50079.5 of the Health and Safety Code, of which at least 50 percent shall be very low income households, as defined in Section 50105 of the Health and Safety Code.

(c) In addition to the requirements of subdivision (c) of Section 33413 of the Health and Safety Code, the authority shall require that the lower and very low income dwelling units developed pursuant to this subdivision remain available at an affordable housing cost to lower and very low income households for at least 45 years, except as to dwelling units developed with the assistance of federal or state subsidy programs which terminate in a shorter period and cannot be extended or renewed.

(d) The authority shall include within the report required by Section 62008 information with respect to compliance by the agency with the requirements of this subdivision.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62110. The covenants or restrictions imposed by the authority pursuant to subdivision (f) of Section 62101 may be subordinated under any of the following alternatives:

(a) To a lien, encumbrance, or regulatory agreement under a federal or state program when a federal or state agency is providing financing, refinancing, or other assistance to the housing units or parcels, if the federal or state agency refuses to consent to the seniority of the authority's covenant or restriction on the basis that it is required to maintain its lien, encumbrance, or regulatory agreement or restrictions due to statutory or regulatory requirements, adopted or approved policies, or other guidelines pertaining to the financing, refinancing, or other assistance of the housing units or parcels.

(b) To a lien, encumbrance, or regulatory agreement of a lender other than the authority or from a bond issuance providing financing, refinancing, or other assistance of owner-occupied units or parcels where the authority makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available.

(c) To an existing lien, encumbrance, or regulatory agreement of a lender other than the authority or from a bond issuance providing financing, refinancing, or other assistance of rental units, where the agency's funds are utilized for rehabilitation of the rental units.

(d) To a lien, encumbrance, or regulatory agreement of a lender other than the authority or from a bond issuance providing financing, refinancing, or other assistance of rental units or parcels where the authority makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available, and where the authority obtains written commitments reasonably designed to protect the authority's investment in the event of default, including, but not limited to, any of the following:

(1) A right of the authority to cure a default on the loan.

(2) A right of the authority to negotiate with the lender after notice of default from the lender.

(3) An agreement that if prior to foreclosure of the loan, the authority takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the authority.

(4) A right of the authority to purchase property from the owner at any time after a default on the loan.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62111. Subsidies provided pursuant to subdivision (e) of Section 62100 may include payment of a portion of the principal and interest on bonds issued by a public agency to finance housing for persons and families specified in that paragraph if the authority ensures by contract that the benefit of the subsidy will be passed on to those persons and families in the form of lower housing costs.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)

62112. For each interest in real property acquired using moneys from the Low and Moderate Income Housing Fund, the authority shall, within five years from the date it first acquires the property interest for the development of housing affordable to persons and families of low and moderate income, initiate activities consistent with the development of the property for that purpose. These activities may include, but are not limited to, zoning changes or agreements entered into for the development and disposition of the property. If these activities have not been initiated within this period, the city or county that created the authority may, by resolution, extend the period during which the authority may retain the property for one additional period not to exceed five years. The resolution of extension shall affirm the intention of the city or county that the property be used for the development of housing affordable to persons and families of low and moderate income. In the event that physical development of the property for this purpose has not begun by the end of the extended period, or if the authority does not comply with this requirement, the property shall be sold and the moneys from the sale, less reimbursement to the agency for the cost of the sale, shall be deposited in the authority's Low and Moderate Income Housing Fund.

(Added by Stats. 2015, Ch. 319, Sec. 2. (AB 2) Effective January 1, 2016.)