

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Division of Housing Policy Development

1800 Third Street, Suite 430
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www.hcd.ca.gov



February 22, 2013

NOTICE**State Income Limit Hold Harmless Policy:
Public Comments and HCD Responses and Decision**Purpose

This notice is to inform interested parties of the decision made by the California Department of Housing and Community Development (HCD) to implement its **State Income Limit Hold Harmless Policy**. The policy is described herein and is the same as Alternative 1 described with three other alternatives in the Department's December 20, 2012 Public Notice for Comment (<http://www.hcd.ca.gov/hpd/harmless.html>) requesting comments be received by January 31, 2013. Included in this notice are summaries of several key issues raised by commenters, the comments received from 19 individuals and/or entities, and the Department's responses.

HCD Decision

HCD's new State Hold Harmless (HH) Policy will restore and maintain household income category levels and median income levels at the highest income level achieved within each county before any decrease HUD made starting in 2010 or may make in the future in publishing its Section 8 income limit levels. This policy will take effect in 2013 and each year thereafter when annually publishing updates to State Income Limits. The Department decided this policy will best assist in its objectives to preserve and increase the supply of affordable rental housing to benefit a broad public and households of all income levels eligible to be served by affordable housing providers required to comply with Health & Safety Code (H&SC) income limits and affordable rent criteria (H&SC 50093(c)).

HCD's State HH Policy replaces the policy discontinued in 2010 by the federal Department of Housing and Urban Development (HUD) applicable to its Section 8 housing assistance program. HUD's former long-standing HH Policy held income limits "harmless" from periodic decreases in household income category levels and area median incomes (AMI). For particular State and local affordable housing programs statutorily linked to HUD's income limits, rent levels calculated based on AMI and project rental income were also held harmless due to AMI being held harmless from any decrease. HUD's former HH policy provided stability regarding tenant eligibility and monthly rents, and project rental income. Due to HUD having published some decreases in 2010, 2011, and 2012 to income limit levels for several California counties, the State has deemed it necessary to stabilize rental income for affordable housing project developments subject to the Department's annually published State Income Limits.

Notice: HCD Hold Harmless Policy, Public Comments, and HCD Responses and Decision

Summary of Public Comments and Department Responses

1. Comment: Policy (Alternative 1) is necessary to not lower income limit levels as doing so will have the effect of reducing applicable project for-sale prices, unit rents, and project rental income that will increase demand for additional subsidies when fewer subsidy sources are available.

HCD Response: The Department agrees that Alternative 1 will best remedy the potential adverse outcomes described and that fewer subsidy sources are available with dissolution of local redevelopment agencies.

2. Comment: Policy (Alternative 1) is necessary to preclude decreases in rent and project rental income that could lead to (1) changes and difficulties regarding more conservative project underwriting that already is very fiscally constrained, and (2) reductions in investment and lending capital and future production of affordable units.

HCD Response: The Department agrees. The small Policy Working Group, consisting of representatives from local government; private and non-profit organizations; affordable housing sponsors, financiers, and operators; were told by a lender projects are conservatively underwritten and that underwriters would be concerned with unanticipated decreases in rents and project rental income which could constrain lending capital for future projects.

3. Comment: Policy (Alternative 1) is necessary for (1) existing projects to stabilize rents relied on during underwriting to support debt and cover operating expenses to support tenants and (2) future projects to provide lenders and investors predictability when underwriting new developments to not jeopardize the financial viability of projects to perform. Decreases in rents, even for just a segment of the extremely-low population (Alternative 4) increases the financial volatility of projects resulting in lenders being less willing to finance new projects to increase affordable housing opportunities, particularly more units for extremely-low income households.

HCD Response: The Department agrees that its HH Policy will best enable existing projects to stay financially viable and potentially encourage lenders and investors to support additional affordable housing projects.

4. Comment: Policy (Alternative 1) is necessary to enable agencies with a loan portfolio to maximize receipt of loan repayments that can be a critical resource for project development and other housing programs.

HCD Response: The Department agrees that local agencies with a loan portfolio can benefit from regular and timely repayments to use for other housing projects and programs.

Notice: HCD Hold Harmless Policy, Public Comments, and HCD Responses and Decision

5. Comment: Policy (Alternative 1) is necessary to preclude different requirements and exceptions among household income categories as providing an exception for extremely-low income households could (1) lead to a significant enough decrease in rental income to jeopardize project feasibility and (2) result in administrative burden, confusion and complexity.

HCD Response: In general, the Department agrees that the adverse outcomes described could occur. The Department was unable to obtain project specific data to analyze. The Policy Working Group was informed that some projects contained a proportion of extremely-low units well above 10 percent of all units and that most projects contained proportions under 10 percent. The Department decided Alternative 1 would provide the most benefit to the broadest public, inclusive of eligible renters of all income levels, and will best assist the Department in achieving its objectives to preserve and increase California's supply of affordable rental housing.

6. Comment: Policy (Alternative 1) is necessary to prevent widening the differences between Health & Safety Code (H&SC) rents, the Department's Multifamily Housing Program rents (MHP), and California's Tax Credit Allocation Committee (TCAC) rents. As H&SC rents are the lowest of all other program rents, the Department should standardize and increase H&SC rents to MHP or TCAC levels.

HCD Response: The Department agrees that H&SC rents are lower than MHP and TCAC rents. H&SC rents can only be changed by legislative amendment.

7. Comment: Policy (Alternative 1) is necessary as other traditional affordable housing funding sources hold rents harmless from reductions

HCD Response: The Department is aware of other program funding sources holding rents harmless from reductions to protect project rental income and financial viability. Due to HUD discontinuing its HH Policy after 2009 and publishing more decreases in income limit and median income levels impacting an increasing number of California counties, the Department agrees with the necessity to implement a State Income Limit Hold Harmless Policy.

8. Comment: Policy (Alternative 1) is necessary as rent decreases should not be allowed as expenses typically increase.

HCD Response: The Department agrees that project expenses can exceed project rental income. The State's Hold Harmless Policy will prevent decreases in rents and assist in keeping projects financially viable.

Notice: HCD Hold Harmless Policy, Public Comments, and HCD Responses and Decision

9. Comment: Policy (Alternative 3 or 4) should be implemented to provide an exception for the extremely-low income (ELI) category to allow rent reductions for the poorest households. It is not unique to establish different standards and without analysis of a typical project it cannot be determined that doing so would be overly administratively burdensome and would have a significant enough impact on project income to jeopardize project viability. Department estimates for ELI households indicate decreases in monthly rents can range from \$2 to \$31 depending on decrease in county area median income. A project's proportion of ELI units can be so low that the impact of a decrease for ELI units, even more than 10 percent of all units (Alternative 4) could result in a very small proportional decrease in project income.

HCD Response: The Department agrees that different programs can establish different standards. For specific programs and projects subject to H&SC requirements, rent standards were established to be lower than MHP and TCAC program rent standards. The Department was unable to obtain sufficient data from an adequate representative sample of projects to assess administrative burden or whether decreased rental income would jeopardize project viability. In addressing issues and questions about H&SC income limits and rent levels over many years, the Department has been made aware that implementing lower H&SC rents in projects funded by different programs with higher rents can be administratively burdensome and confusing.

Public Comments

The following pages contain all 19 comments received.



December 27, 2012

Delivered via electronic mail to cahouse@hcd.ca.gov
Dept of Housing and Community Development
Division of Housing Policy Development
1800 3rd Street
Sacramento, CA 94252-2053

RE: Proposed State Income Limit Hold Harmless Policy

Dear HCD Representative:

We wholeheartedly support adoption of the proposed income limit hold harmless policy for all income levels. Given the fragile recovery of the housing market, lowering the income limits will be a major financial blow to those who produce, own and operate affordable housing.

In addition to housing that is directly subsidized by state housing programs, this policy will impact far more units that are built under local inclusionary and density bonus programs. Lower income limits will reduce the sales prices and rents for these homes. They will make it harder to pencil out new affordable units, which will cause the market rate units in mixed-income projects to be delayed or scrapped. Lower income limits will also increase the need and demand for housing subsidies at a time when far less is available.

In addition, lower income limits will make it more difficult for the owners of resale controlled homes to sell. Their sales prices will be reduced and the size of their potential market will also be smaller.

Thank you for considering this policy. We hope you adopt it.

Sincerely,



Gerald L. Rioux
Executive Director



BUILDING • SUSTAINING • LEADING

**BRIDGE HOUSING
CORPORATION**

BRIDGE PROPERTY
MANAGEMENT COMPANY

BAY AREA SENIOR SERVICES, INC.

BRIDGE ECONOMIC
DEVELOPMENT CORPORATION

January 7, 2013

Lisa Bates
Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
1800 3rd Street
P.O. Box 952053
Sacramento CA 94252-2053

Dear Ms. Bates:

I write to express BRIDGE Housing Corporation's support for the State Hold Harmless Policy Alternative 1 as proposed by HCD. Alternative 1 will apply the State Income Limit Hold Harmless Policy (HH) identical to the former HUD HH Policy to existing and future projects.

The Hold Harmless Policy will ensure stabilized rental income for affordable housing developments with State and locally assisted units. This is important to preserve existing affordable housing as sufficient and stable rental income is necessary for project viability and property maintenance. A small percentage decrease in the income category limits and area median income limits can translate into a significant loss of rental income for a property. The loss of rental income could cause some owners to remove affordable units from restricted programs at the end of the regulatory period, thus exacerbating the existing affordable housing shortage.

Additionally, the HH will provide lenders and investors predictability when underwriting new affordable developments. This allows the maximum leveraging of resources, and reduces the need for large operating deficit reserves.

I urge HCD to adopt the HH Policy as proposed in Alternative 1, and thank you for the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Cynthia A. Parker", written in a cursive style.

Cynthia A. Parker
President and CEO
BRIDGE Housing Corporation

345 SPEAR STREET, SUITE 700, SAN FRANCISCO, CA 94105 TEL: 415.989.1111 FAX: 495.4898 BRIDGEHOUSING.COM
9191 TOWNE CENTER DRIVE, SUITE L101, SAN DIEGO, CA 92122 TEL: 858.535.0552 FAX: 535.0652

BRIDGE HOUSING IS A NOT-FOR-PROFIT, PUBLIC-BENEFIT CORPORATION

Angel, Mario@HCD

From: Mary Kaiser <mary.kaiser@e-ccrc.org>
Sent: Monday, January 07, 2013 3:47 PM
To: DFA House
Subject: CCRC Supports the Proposed HCD Hold Harmless Policy

As a permanent lender on affordable housing projects throughout the state, CCRC strongly supports HCD's proposed Hold Harmless Policy that HUD eliminated in 2010. The ability for rents that were relied upon during underwriting to support debt to decrease during the term of project and its loan jeopardizes the viability of the project to perform and support the tenants it houses. Please count us in in supporting this proposal.

The State of California, Department of Housing and Community Development (HCD), is soliciting public review and comment on its proposed new State Income Limit Hold Harmless (HH) Policy to take effect 2013. The State's new HH Policy will impact State and local affordable housing programs required to comply with California Health and Safety Code sections and federal Section 8 Housing Assistance Program Income Limits annually published by Department of Housing and Urban Development (HUD). HCD's HH policy is proposed to replace the Hold Harmless Policy that HUD eliminated in 2010. HCD's proposed Hold Harmless (HH) Policy will restore household income category limits (applicable for eligibility determination purposes) and area median income (applicable for affordable rent determination purposes) to the highest level achieved before HUD made annual decreases between 2010 and 2012 impacting 25 California counties.

Mary Kaiser

CCRC
225 W. Broadway, Suite 120
Glendale, Ca 91204
818-550-9801
Mary.kaiser@e-ccrc.org

January 11, 2013

Lisa Bates, Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
PO Box 952053
Sacramento, CA 94252-2053

Re: Proposed State Income Limit Hold Harmless Policy

Dear Ms. Bates,

Community Economics, Inc. (CEI) would like to submit the following comments on the proposed regulations for the Multifamily Housing program. As a 501(c)(3) technical assistance organization, CEI provides financial consulting services to non-profit housing developers and public agencies, and has underwritten projects subject to the State Income Limits.

We urge HCD to adopt a State Income Limit Hold Harmless policy. We think this is vital to the ongoing financial feasibility of both new and existing projects which are subject to these income limits. Most affordable housing projects have been underwritten with limited debt coverage ratios and cash flow, and reductions in rents seriously jeopardize a project's ability to make debt service payments and pay for necessary operating expenses and upkeep. Declining rents put the projects at serious risk of foreclosure at a time when the state cannot afford to lose any of its affordable housing units.

In addition, if there is no hold harmless policy for new projects, banks and investors will require much more conservative underwriting of these projects. This will result in reductions in the amount of private debt and equity that will be available, and greatly reduce the number of units that will be produced. This will happen even if the income limits don't in fact decrease; the mere risk of that happening will require them to underwrite to that possibility.

For these reasons, we recommend that HCD adopt these policies *for new and existing projects* – i.e. Alternative 1 in your memo.

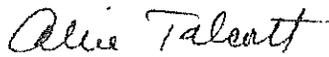
While we are sympathetic to the needs of extremely low income households, we do not recommend either Alternative 3 or 4. For special needs or homeless projects with a high percentage of ELI units, Alternative 3 could lead to a large decrease in rental income if median incomes decrease, and could imperil project feasibility of both new and existing projects. While Alternative 4 would limit income decreases to hopefully more manageable levels, both of these alternatives would add confusion and complexity to an already extremely confusing set of rules for calculating allowable rents. In our experience, the change in HUD and LIHTC hold harmless provisions is complicated and has been difficult for sponsors to understand and properly implement. The confusion is greatly magnified for projects that must also comply with regulatory agreements tied to the State Median Income Limits. Having different

requirements for projects with ELI units would be an additional level of complication. We urge HCD to not add to the confusion, and to adopt provisions that are as simple as possible. We believe that is Alternative 1.

While we do urge the adoption of Alternative 1, we also want to note that HCD could consider subsequent changes to better conform to the hold harmless provisions governing tax credit units. For tax credit units, rather than preventing the income limits from decreasing, federal policies move the hold harmless provisions down to the project level, with provisions that allow the project's income limits to not decrease, even if the new county median income decreases. That allows existing projects to maintain their existing rents, but new projects are subject to the new lower median incomes. Furthermore, a rent floor can be set at the time of tax credit carryover, giving underwriters assurance that if median incomes go down during construction, the underwritten rents can still be charged. In the long run, it would be less confusing to everyone if there were simply one set of income limits shared by TCAC and HCD, and the rules were the same.

Thank you for your consideration of our comments. If you have any questions, I can be contacted at alice@communityeconomics.org or 510 832-8300 X3.

Sincerely,

A handwritten signature in cursive script that reads "Alice Talcott".

Alice Talcott
Community Economics, Inc.



Development Services Department

Redevelopment & Housing

January 11, 2013

California Department of Housing and Community Development
Division of Housing Policy Development
1800 3rd Street
P.O. Box 952053
Sacramento CA 94252-2053

This letter is written in support of HCD's intention to create a Hold Harmless policy for Health and Safety Code rents.

When HUD eliminated the "Hold Harmless" provision in the Section 8 Median Income, they specifically created another income limit for projects funded with Tax Credits, Bonds, and/or HOME funds. In HUD's comments in the Federal Register, they stated that "lower rents for these projects would be detrimental to existing and future project development; existing projects would be at risk for financial default, while future projects would have difficulty securing financing." However, HCD did not make any changes to their implementation of the median income at that time; so many affordable projects across California have had to decrease rents to be in conformance with Health and Safety Code since 2010. The threat of decreased rental income is harmful to operating budgets of existing projects as well as the underwriting potential of future projects.

All traditional funding sources for affordable housing hold rents harmless from reductions, except for Health and Safety Code maximum rent application. Implementing your proposal would stabilize rental income for both existing and future projects.

Sincerely,

Amanda Mills
Housing Manager



January 14, 2013

Ms. Lisa Bates
Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
Sacramento CA 94252

RE: Comments on Proposed State Income Limits Hold Harmless Policy

Dear Deputy Director Bates,

Thank you for the opportunity to comment on the Proposed State Income Limits Hold Harmless Policy. We have reviewed the proposal issued on December 20, 2012 and the Non-Profit Housing Association of Northern California (NPH) submits the following comments for your consideration.

We urge HCD to adopt a State Income Limit Hold Harmless Policy. We think this is vital to the ongoing financial feasibility of both new and existing affordable housing developments that are subject to these income limits. Most affordable housing projects have been underwritten with limited debt coverage ratios and cash flow and, therefore, reductions in rents seriously jeopardize a project's ability to make debt service payments and pay for necessary operating expenses and upkeep. Declining rents put the projects at serious risk of foreclosure at a time when the state cannot afford to lose any of its affordable housing units.

In addition, if there is no hold harmless policy for new projects, banks and investors will require much more conservative underwriting of these projects. This will result in reductions in the amount of private debt and equity that will be available and greatly reduce the number of units that will be produced. This will happen even if the income limits don't in fact decrease; the mere risk of this happening will require them to underwrite to that possibility.

For these reasons, NPH strongly recommends that HCD adopt these policies for new and existing projects as outlined in Alternative 1.

We are very sympathetic to the needs of extremely low-income people. That is why we have dedicated our lives to this work. However, we do not recommend either Alternative 3 or 4. For special needs or homeless projects with a high percentage of ELI units, Alternative 3 could lead to a large decrease in rental income if median incomes decrease, and could imperil project feasibility of both new and existing projects. While Alternative 4 would limit income decreases to hopefully more manageable levels, both of these alternatives would add confusion and complexity to an already extremely confusing set of rules for calculating allowable rents. In the



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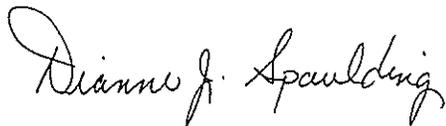
369 Pine Street
Suite 350
San Francisco, CA
94104
415.989.8160 Tel
415.989.8166 Fax
nonprofithousing.org

experience of our members, the change in HUD and LIHTC hold harmless provisions is complicated and has been difficult for sponsors to understand and properly implement. The confusion is greatly magnified for projects that must also comply with regulatory agreements tied to the State Median Income Limits. Having different requirements for projects with ELI units would be an additional level of complication.

While NPH does urge the adoption of Alternative 1, we also want to note that HCD should consider subsequent changes to better conform to the hold harmless provisions governing tax credit units. For tax credit units, rather than preventing the income limits from decreasing, federal policies move the hold harmless provisions down to the project level, with provisions that allow the project's income limits to not decrease, even if the new county median income decreases. That allows existing projects to maintain their existing rents, but new projects are subject to the new lower median incomes. Furthermore, a rent floor can be set at the time of tax credit carryover, giving underwriters assurance that if median incomes go down during construction, the underwritten rents can still be charged. In the long run, it would be less confusing to everyone if there were simply one set of income limits shared by TCAC and HCD and the rules were the same.

Thank you for your consideration of these comments. Please feel free to contact me should you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Dianne J. Spaulding". The signature is written in black ink and is positioned above the typed name.

Dianne J. Spaulding
Executive Director
The Non-Profit Housing Association of Northern California



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Executive Director

January 14, 2013

California Department of Housing and Community Development
Division of Housing Policy Development
1800 Third Street
P. O. Box 952053
Sacramento, CA 94252-2053

Via Electronic Mail to cahouse@hcd.ca.gov

Re: Proposed State Income Limit Hold Harmless Policy

To Whom It May Concern:

Thank you for the opportunity to comment on the proposed State Income Limit Hold Harmless Policy. The San Diego Housing Federation strongly supports the Department of Housing and Community Development's recommendation to restore the continuity between the rent calculations for state and federal funding programs for existing and future properties. We believe that the proposal to maintain the highest income level for all new properties and to restore rents in existing properties to their previous highest levels carries out the intent of state law prior to any changes in HUD regulations.

Furthermore, as articulated in your policy memo, the proposed alternative protects the ongoing financial viability of existing and future affordable housing developments. Affordable housing properties are generally underwritten with thin operating margins. Any reduction in anticipated operating capital can compromise the ability to maintain the property, or worse, can jeopardize the financing of the property. As such, we agree that a policy that precludes decreases in household income category and area median income levels is necessary to protect project rental income from any resulting decreases in rent levels.

We appreciate the opportunity to share our feedback with you. Please feel free to contact me should you have any questions.

Sincerely,

Susan Riggs Tinsky
Executive Director

San Diego's Voice for Affordable Housing





January 16, 2013

Ms. Lisa Bates, Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
P.O. Box 952053
Sacramento, CA 94252-2053

Re: Proposed State Income Limit Hold Harmless Policy

Dear Ms. Bates:

Thank you for this opportunity to comment on HCD's proposed State Income Limit Hold Harmless Policy. As one of the State's largest non-profit owners/developers of affordable housing, this policy is critical to our ability to responsibly manage our existing properties as well as to build more affordable housing in this challenging funding environment.

We urge HCD to adopt a State Income Limit Hold Harmless policy *for new and existing projects* – i.e. Alternative 1 in your memo.

We also agree with Community Economics that ideally it would be less confusing to everyone if there were simply one set of income limits shared by TCAC and HCD, and the rules were the same.

Thank you for your consideration of our comments.

If you have any questions, I can be contacted at jlindenthal@midpen-housing.org or (650) 356-2919.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jan Lindenthal', with a long horizontal flourish extending to the right.

Jan Lindenthal
Vice President of Real Estate Development

ARNIE FISCHMAN

HOUSING AND COMMUNITY DEVELOPMENT CONSULTING
4061 LAKESHORE AVENUE
OAKLAND, CA 94610
(510) 763-1058
Arniefish@aol.com

January 17, 2013

RE: Proposed State Income Limits Hold Harmless Policy

CA Dept. of Housing and Community Development
Via e-mail: cahouse@hcd.ca.gov

Gentlepeople:

I am writing to strongly support the proposed State Income Limits Hold Harmless Policy. I provide housing consulting services for numerous affordable housing properties in San Mateo County. Some are existing and some are under development.

Without the proposed hold harmless policy, maximum rents on many affordable housing properties in San Mateo County will be substantially reduced, threatening their financial viability.

These substantial rent reductions will imperil the ability to make mortgage payments to private lenders, creating threat of foreclosures on affordable housing properties. Rent reductions will imperil the ability to pay for required operating and maintenance expenses, which have not decreased, undermining the provision of adequate housing to lower income households.

The rent reductions will apply to numerous properties currently under development and construction which have been underwritten and financed using higher 2012 maximum rents. Without the hold harmless policy, affordable housing projects will no longer be financial feasible. The completion of these projects will be threatened.

One example is a 12 unit apartment acquisition and rehabilitation project in Menlo Park is currently under construction. The sponsor is a nonprofit. The project financing was underwritten in 2012, including a permanent first mortgage from Boston First Financial, using published 2012 maximum rents. The apartments will be affordable to very low-income and extremely low-income households with a priority for veterans. If the property is required to use the substantially lower 2013 rents, it will not generate sufficient income to make the monthly payments on the required

Arnie Fischman
Hold Harmless Policy Support Letter
Page 2

first mortgage. The lower rents would result in a reduction in the supportable first mortgage of over \$100,000. This will place the completion of the development in jeopardy while it is in the midst of construction.

I know there are many other properties facing this predicament. At a time of great difficulty providing affordable housing I urge the Department to adopt the proposed Hold Harmless Policy

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arnie Fischman', written over a horizontal line.

Arnie Fischman



tel. 858.679.2828 fax 858.679.9076 web affirmedhousing.com

January 17, 2013

California Department of Housing and Community Development
Division of Housing Policy Development
1800 3rd Street
P.O. Box 952053
Sacramento, CA 94252-2053

Comments on Proposed HCD State Income Limit Hold Harmless Policy

In response to the **Public Notice for Comment, "Proposed State Income Hold Harmless Policy"** dated December 20th, 2012; I would like to offer my strong support for implementing Alternative 1: Apply State Income Limit Hold Harmless (HH) Policy identical to former HUD HH Policy to existing and future projects.

The clear and immediate impact of not implementing a Hold Harmless policy is the financial feasibility of the project. Clearly, an easily quantifiable impact in seven counties with 2012 decreased AMI can be calculated. While this quantifiable financial impact is very clear and important, my intention is to comment on the larger impact of how allowing rents to actually decrease contradicts expectations in the industry by Public and Private Stakeholders that underwrite and invest in affordable housing. Moreover, when there is uncertainty and contraction, there will be less investment into affordable housing.

Affordable housing projects are underwritten and operate at just over a breakeven threshold. Accordingly, California Tax Credit Allocation Committee (CTCAC) regulates this threshold as defined by stipulations in the project's Debt Coverage Ratio (DCR). Specifically, CTCAC Regulation Section 10327 C (6): governs the minimum DCR of a project while Section 10327 G (6) governs the maximum DCR of a project as outlined in the California Code of Regulations Title 4, Division 17, and Chapter 1.

CTCAC Regulation Section 10327 C (6): Minimum Debt Service Coverage. An initial debt service coverage ration equal to at least 1.15 to 1 is required, except for FHA/ HUD projects. RHS projects or projects financed by the California Housing Finance Agency. Debt Service does not include residual receipts debt payments.

CTCAC Regulation Section 10327 G (6): Except where a higher first year ratio is necessary to meet the requirements of subsection 10327(f), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service or eight percent (8%) of gross income, during any one of the first three years of project operation.

Essentially, affordable housing projects are underwritten in such a manner to be limited to a 1 to 1.25% DCR. The DCR range serves to demonstrate how the project will be self-sufficient after both Public and Private funds are invested. In determining the DCR, these projects use assumptions so that rent growth is 2% while expense growth is 3 to 3.5%. Clearly from the onset, affordable housing projects are underwritten in a very restrained manner. Their operations are forecasted so that expenses appreciate more rapidly than income.

Comments on Proposed HCD State Income Hold Harmless Policy

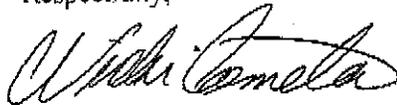
January 18, 2013

The underwriting of the financially tight operations of affordable housing projects do not provide much leeway for error to investors. Due to this notion, detailed underwriting assumptions are largely scrutinized so that the expectation is that these projects will be predictable and able to pay their expenses, debt service, while also setting aside reserves to maintain the quality of the project. When rents stay stable and do not increase, expectations are not met. However, when rents are permitted to decrease while expenses increase, there is complete contradiction to the expectations of the investors.

In closing, the predictable nature of the performance of affordable housing projects is an attribute that encourages investment. When rents are allowed to decrease, there is a complete contradiction in the underlying assumptions that will discourage investment in affordable housing. While the immediate financial impact of not implementing a Hold Harmless Policy will be quantifiably measured by projects in seven counties with 2012 decreased AMI, the larger concern is the contradiction to stakeholder's expectations that will ultimately affect investment activity into affordable housing.

Thank you for the opportunity to comment on the Proposed HCD State Income Limit Hold Harmless Policy. Once again, I strongly support the implementation of Alternative 1: Apply State Income Limit Hold Harmless (HH) Policy identical to former HUD HH Policy to existing and future projects.

Respectfully,



Nicki Coneta
Chief Financial Officer
Affirmed Housing Group

Angel, Mario@HCD

From: Julie Conway <PLN168@co.santa-cruz.ca.us>
Sent: Thursday, January 17, 2013 2:33 PM
To: HCD CA House
Subject: Proposed Hold Harmless Policy

Dear Ms. Bates,

I'm writing in support of the proposed HCD Hold Harmless Policy for which there is urgent need in Santa Cruz County. The insufficient supply of affordable housing coupled with relatively low incomes is a significant issue for Santa Cruz County. Without an HCD policy to counteract the drop in Area Median Income by HUD our affordable projects will face a serious drop in income and eligibility for affordable units will be tightened and limit access to that scarce resource for families that need the housing.

Thank you.

Julie

Julie Conway
County of Santa Cruz Housing Program
831-454-5162
julie.conway@co.santa-cruz.ca.us



January 17, 2013

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Hayward, CA 94541

510.582.1460 Phone
510.582.6123 Fax

Lisa Bates, Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
PO Box 952053
Sacramento, CA 94252-2053

Re: Proposed State Income Limit Hold Harmless Policy

Dear Ms. Bates,

Eden Housing, Inc. very much appreciates the opportunity to submit the following comments upon the proposed regulations for the Multifamily Housing program. Since its inception in 1968, Eden Housing has been dedicated to building affordable rental and home-ownership communities across Northern California. Over the past 45 years, Eden has utilized State of California Housing and Community Development funding programs and local Redevelopment funds that also rely upon the State Income and Rent Limits in dozens of projects, with another 600 units in the pipeline.

We urge HCD to adopt a State Income Limit Hold Harmless policy. This is critical to the ongoing financial feasibility of both our new and existing projects which are subject to these income limits. Most affordable housing projects have been underwritten with limited debt coverage ratios and cash flow, and reductions in rents can seriously jeopardize a project's ability to make debt service payments and pay for necessary operating expenses and maintenance. Declining rents put existing projects at serious risk of ongoing operating deficits, and may increase initial financing gaps for new projects at a time when there are fewer and fewer local and state resources to make up the difference.

If there is no hold harmless policy for new projects, banks and investors will require much more conservative underwriting of these projects. This will result in reductions in the amount of private debt and equity that will be available, and greatly reduce the number of units that will be produced or require that we underwrite to higher (less affordable) rents in order to secure the same amount of debt needed to build the project. This will happen even if the income limits don't in fact decrease; the mere risk of that happening will require our lenders and investors to underwrite more conservatively to that future possibility. Furthermore, there are serious risks to projects in construction which closed their construction financing based on 2011 or 2012 rents, but may need to lease up at lower rents – the permanent lender will reduce the mortgage accordingly, creating a potential financing gap at permanent loan conversion.



For these reasons, we recommend that HCD adopt these policies for new and existing projects – i.e. Alternative 1 in your memo.

While we are sympathetic to the needs of extremely low income households, we do not recommend either Alternative 3 or 4. For special needs or homeless projects with a high percentage of ELI units, Alternative 3 could lead to a large decrease in rental income if median incomes decrease, and could imperil project feasibility of both new and existing projects. While Alternative 4 would limit income decreases to hopefully more manageable levels, both of these alternatives would add confusion and complexity to an already extremely confusing set of rules for calculating allowable rents. The change in HUD and LIHTC hold harmless provisions is complicated and has been very difficult for property management companies to understand and properly implement. The confusion is greatly magnified for projects that must also comply with regulatory agreements tied to the State Median Income Limits. Having different requirements for projects with ELI units would be an additional level of complication. We urge HCD to not add to the confusion, and to adopt provisions that are as simple as possible. We believe that is Alternative 1.

While we do urge the adoption of Alternative 1, we also want to propose that HCD consider subsequent changes to better conform to the hold harmless provisions governing tax credit units. For tax credit units, rather than preventing the income limits from decreasing, federal policies move the hold harmless provisions down to the project level, with provisions that allow the project's income limits to not decrease, even if the new county median income decreases. That allows existing projects to maintain their existing rents, but new projects are subject to the new lower median incomes. Furthermore, a rent floor can be set at the time of tax credit carryover, giving underwriters assurance that if median incomes go down during construction, the underwritten rents can still be charged. In the long run, it would be less confusing to everyone if there were simply one set of income limits shared by TCAC and HCD, and the rules were the same.

Thank you for your consideration of our comments. If you have any questions, I can be contacted at apapanastassiou@edenhousing.org or at (510) 247-8118.

Sincerely,



Andrea Papanastassiou
Director of Real Estate Development

Angel, Mario@HCD

From: Debra Frey <dfrey@interosantacruz.com>
Sent: Friday, January 18, 2013 4:55 PM
To: HCD CA House
Subject: Canterbury Park

To: Division of Housing Policy Department

California Dept. of Housing and Community Development

South County Housing will complete construction of Canterbury Park, a 19 unit affordable home ownership townhome development in Santa Cruz County, in April 2013. We strongly urge adoption by HCD of the proposed State Income Limit Hold Harmless Policy. This is to confirm we have Reservation Agreements signed and deposits received from 18 buyers who are qualified based on HCD 2012 income limits. If the hold harmless policy is not adopted 4-5 of our buyers will lose their only opportunity to purchase a home in Santa Cruz County. South County Housing will also incur additional costs which they do not have in their budget, and delays in finding lower income buyers for this project.

Thank you,
Debra Frey

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Debra Frey
Broker/Owner
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Angel, Mario@HCD

From: Polly V. Marshall <PMarshall@goldfarbblipman.com>
Sent: Friday, January 18, 2013 4:24 PM
To: HCD CA House
Subject: CORRECTED Comment on HCD's proposed State Income Limits Hold Harmless Policy

Lisa Bates
Deputy Director, Housing Policy Division
California Department of Housing and Community Development

Dear Ms. Bates:

I am writing on behalf of all the attorneys at Goldfarb & Lipman to encourage the Department of Housing and Community Development to adopt its proposed State Income Limits Hold Harmless Policy. As attorneys who frequently represent affordable housing developers and operators, as well as numerous local public agencies providing funding for affordable projects, we are very familiar with the consequences of HUD's 2010 elimination of its income limits hold harmless policy. We commend HCD's efforts to adopt its own policy as it will encourage the development and operation of desperately needed affordable housing units in California.

The State Income Limits Hold Harmless Policy will protect the existing stock of affordable units in California by enabling developers and operators to depend on a stable project income necessary to pay project lenders and perform adequate repairs and maintenance. As you know, affordable housing developments throughout California have been financed based on use of area median income limits to determine project rents, which determine project income and, consequently, project feasibility. The elimination of HUD's income limits hold-harmless policy threatened the economic viability of these properties by forcing them to decrease rents, leading in many cases to an inability to both make required mortgage payments and properly operate and maintain properties. In some instances, foreclosure has been threatened as a result. Adoption by HCD of the proposed State Income Limits Hold Harmless Policy will, in contrast, ensure the long-term feasibility of affordable projects and their continued availability to extremely low, very low, and low-income tenants.

Implementing the proposed State Income Limits Hold Harmless Policy will also encourage the development of future affordable projects, particularly those targeted to extremely low income residents. Because HUD's elimination of the policy has increased the financial volatility of affordable housing projects, bank underwriters are less willing to finance new projects that include extremely low income and very low income units because of the possibility of rent decreases that would severely impact project feasibility. Ensuring that affordable developments that include substantial numbers of extremely low income and very low income units will be financially stable, however, will encourage banks and investors to finance the development of these communities.

By promoting the financial stability of affordable housing projects, the State Income Limits Hold Harmless Policy will enable the continued operation of existing affordable projects and the development of future affordable projects.

Thank you for developing the proposed policy and for considering our views.

Polly V. Marshall
Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
(510) 836-6336
(510) 836-1035 fax

Angel, Mario@HCD

From: Dick Kempke <dkempke@scounty.com>
Sent: Friday, January 18, 2013 3:42 PM
To: HCD CA House
Subject: Proposed State Income Limit Hold Harmless Policy

To: Division of Housing Policy Development
California Dept. of Housing and Community Development

South County Housing strongly urges adoption by HCD of the proposed State Income Limit Hold Harmless Policy. South County Housing will complete construction of Canterbury Park, a 19 unit affordable home ownership townhome development in Santa Cruz County, in April 2013. We have Reservation Agreements signed and deposits received from 18 buyers who are qualified based on HCD 2012 income limits. If the hold harmless policy is not adopted 4-5 of our buyers will lose their only opportunity to purchase a home affordable to them in Santa Cruz County. Additionally South County Housing will incur additional costs which we do not have in our budget, and delays in finding lower income buyers for this project.

Regards,
Dick Kempke
Project Manager
South County Housing
cell (831)334-7417

January 18, 2013

Lisa Bates, Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
1800 3rd Street
P.O. Box 952053
Sacramento CA 94252-2053

Via Electronic Mail to cahouse@hcd.ca.gov

Re: Proposed State Income Limit Hold Harmless Policy

Dear Ms. Bates,

The City of San Jose appreciates the opportunity to provide comments to the Department of Housing and Community Development (HCD) for its proposed State Income Limit Hold Harmless (HH) Policy. The City's Housing Department has been a leader in the provision of affordable housing, having facilitated the production of more than 20,000 low- and moderate-income units since 1988.

We strongly support HCD's proposed hold harmless policy. This policy is vital for the financial feasibility of new and existing affordable housing developments that are subject to these income limits, and would further California's commitment to creating housing that is affordable for the State's lower- and moderate-income residents. We specifically support Alternative 1 of the proposal to apply the State's HH Policy identical to former HUD HH policy to both existing and future projects.

Alternative 1 would:

- *Protect the financial viability of new and existing affordable housing developments*

Most affordable housing projects have been structured with tight underwriting criteria. A reduction in rents could critically impact the ability for existing developments to meet their debt service payments and/or operating costs. Declining rents put the projects at real risk of foreclosure at a time when individuals and households need affordable and decent housing more than ever before.

Additionally, if there is no hold harmless policy for new projects, banks and investors will require more conservative underwriting of these projects, which would reduce the amount of private capital for affordable housing and therefore the number of units that will be produced.

- *Maximize predictability for lenders*

Even without an actual reduction in income limits, the mere potential for income limits to decrease would require lenders to conservatively underwrite to those lower standards. The adoption of Alternative 1 would send a clear signal to lenders that they can incorporate higher

rents in their calculations, which would increase the amount of private capital for affordable housing

- *Minimize public subsidy amounts*

Alternative 1 would allow future projects to incorporate higher rents in their pro formas, which would increase financial feasibility as well as minimize the amount of public subsidy required to make the projects viable. This would free up public dollars – already scarce – for other projects and produce more units than would have otherwise been created.

- *Maximize the ease of implementation/Minimize administrative burden*

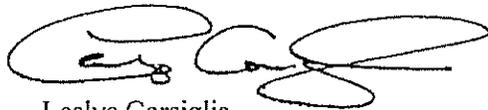
Alternative 1 facilitates compliance with a clear, streamlined HH policy that would be easier to follow and more efficient to implement relative to Alternatives 3 or 4 in the proposed policy. Additionally, it would provide one standard for units across income categories, rather than creating separate criteria for projects with Extremely-Low Income (ELI) units.

- *Maximize loan repayments from project income*

The proposed HH policy allows agencies with loan portfolios to maximize repayment amounts. Loan repayments provide agencies critical resources for project development and other important housing programs. This is especially important, given the elimination of redevelopment agencies and the limitations of other affordable housing funding sources.

Thank you for your consideration of our comments. If you have any questions, please contact me at leslye.corsiglia@sanjoseca.gov or (408) 535-3851.

Sincerely,



Leslye Corsiglia
Director of Housing

CORE affordable

January 18, 2013

California Department of Housing and Community Development
Division of Housing Policy Development
Sent via email to: cahouse@hcd.ca.gov

RE: Public Comment on the Proposed State Income Limit Hold Harmless Policy

To Whom It May Concern:

On behalf of CORE Affordable Housing, this letter is to provide public comment in support of the proposed new State Income Limit Hold Harmless (HH) Policy to take effect 2013. CORE has developed well nearly 2,000 residential units in the San Francisco – South Bay Area. In one of the world's most expensive regions, we have been in the business of developing, constructing, and operating high quality, affordable homes for the workforce and lower income families for 30 years.

At our rental properties, we pride ourselves in hiring the industry leaders in professional and ethical property management, and in maintaining properties at the highest standard, for the benefit and integrity of residents and neighbors. As operations costs grow consistently every year, it is necessary that rental revenue is allowed to grow, or at least remain *steady*.

The lack of a HH policy has had a negative effect on properties within our portfolio, including 14 individual properties with over 1,580 units. Where the market demand would allow for higher rents, enacting HH brings the potential for an additional \$840,000 in the first year, portfolio-wide. In many cases, this makes critical maintenance and repairs possible. Delmas Park is a 122-unit high rise apartment community in San Jose which would benefit from an additional \$101,000 the first year. Delmas is in need of capital improvements and has less than \$700 per unit in the replacement reserves. Without increased revenue from HH, we will need to appeal to the City to allow any cash flow from the property to be placed into a reserve account for the capital needs, instead of flowing back to the City's Housing Department. Allowing reinstatement of the previous rent "peaks" would significantly help the condition of Delmas Park immediately and in the long-term.

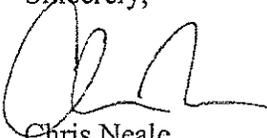
In contrast to Delmas Park, some properties, such as newer developments without significant repair needs, would benefit from restored rent levels by generating additional revenue flows back to the

municipal financing agencies. In most of our assets, the City of San Jose is positioned to receive cash flow through the waterfalls in place.

The decrease in rent levels also has significant negative effects on the viability of affordable development overall. The possibility of drastic and unpredictable drops in permitted rental rates creates insecurity in the investor market, threatening future development feasibility.

Thank you for your efforts in ensuring that below-market-rate units in California can be well maintained for the benefit of tenants, as well as for the integrity and longevity of the affordable housing industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Neale", written over a circular stamp.

Chris Neale
Core Affordable Housing, LLC
The Core Companies
cneale@thecorecompanies.com



January 24, 2013

Ms. Lisa Bates
Deputy Director, Housing Policy Development
Department of Housing and Community Development
P.O. Box 952053
Sacramento, CA 94252

RE: Comments on Proposed State Income Limits Hold Harmless Policy

Dear Deputy Director Bates,

Thank you for the opportunity to comment on the Proposed State Income Limits Hold Harmless Policy. We have reviewed the proposal issued on December 20, 2012 and the California Housing Consortium (CHC) urges HCD to adopt the proposed policy, specifically Alternative 1.

Establishing a Hold Harmless policy in California is vital to the ongoing financial feasibility of both new and existing affordable housing developments that are subject to these income limits and would further California's commitment to creating housing that is affordable for the state's lower- and moderate-income residents. Alternative 1 would:

Protect the financial feasibility of new and existing affordable housing developments

Most affordable housing projects have been underwritten with limited debt coverage ratios and cash flow and, therefore, reductions in rents seriously jeopardize a project's ability to make debt service payments and pay for necessary operating expenses and upkeep. Declining rents put the projects at serious risk of foreclosure at a time when the state cannot afford to lose any of its affordable housing units.

Without a hold harmless policy for new projects, banks and investors will require much more conservative underwriting of these projects. This will result in reductions in the amount of private debt and equity that will be available and greatly reduce the number of units that will be produced.

Maximize predictability for lenders

Even without an actual reduction in income limits, the mere risk of decrease will require lenders to conservatively underwrite to those lower standards. The adoption of Alternative 1 would signal to lenders that they can incorporate higher rents in their

calculations, which would in turn increase the amount of private capital for affordable housing.

Minimize administrative burden

Alternative 1 facilitates compliance with a clear, streamlined hold harmless policy that would be easier to follow and more efficient to implement than any other alternative. It would provide one standard for units across income categories, rather than creating separate criteria for different categories of projects.

For these reasons, CHC strongly recommends that HCD adopt these policies for new and existing projects as outlined in Alternative 1. Thank you for your consideration. Should you have any question, don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Ray Pearl". The signature is written in a cursive style with a large, prominent "R" and "P".

Ray Pearl
Executive Director

Subject: FW: Proposed HCD Income Limit Hold Harmless Policy

From: Brian Augusta [<mailto:baugusta@housingadvocates.org>]

Sent: Monday, January 28, 2013 2:38 PM

To: Campora, Glen@HCD

Subject: Re:

My general sense is that while some of the options were determined to be overly burdensome there was no real analysis of why. It certainly would not be unique to this issue for providers (or an agency) to be subject to two differing standards and since in this instance it has the benefit of protecting rents for the poorest households, it would seem more analysis is necessary before concluding it is unworkable administratively.

Moreover, the conclusion was made that exempting ELI households would have a significant impact on rental income, but none of the attachments actually provide any meaningful support for that analysis. We see that rents in some counties would be decreased as much as \$31 for ELI households (but in others by only \$2). But even in that worse case scenario, one can not determine that it would result in "large" decreases in project income or impact project viability without examining a typical project. In doing so, one might find that the proportion of ELI households is so low that the impact of a decrease even as high as 10% for ELI households would result in a very small proportional decrease in project income.