

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
Division of Financial Assistance**

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December 20, 2012

**FOR IMMEDIATE POSTING****PUBLIC NOTICE FOR COMMENT****Proposed State Income Limit Hold Harmless Policy**

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. Since elimination of HUD's HH Policy, HCD has published several decreases in county household income category levels and area median incomes (AMI). Seven of 25 counties still reflect a 2012 decreased AMI resulting in small reductions in tenant monthly rent that, depending on number of State and/or local assisted units, can result in large decreases in project rental income to jeopardize the viability of an affordable housing project and future development of such projects. HCD's proposed HH Policy will, in 2013, result in restoring rent levels to their previous highest levels before HUD decreased AMI and preclude future HUD decreases in order to stabilize rental income for existing and future projects.

**The public comment period is 30 days from the date of this notice. The Department must receive written comments by close of business on the 30<sup>th</sup> day to consider implementing HCD's HH Policy when publishing 2013 State Income Limits late January 2013.**

Written comments can be submitted by either facsimile to (916) 327-2643, electronic mail to [cahouse@hcd.ca.gov](mailto:cahouse@hcd.ca.gov), or mailing to:

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Division of Housing Policy Development  
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## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

## Division of Housing Policy Development

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## MEMORANDUM

**DATE:** December 20, 2012

**TO:** Interested Parties  
*Lisa Bates*

**FROM:** Lisa Bates, Deputy Director  
Division of Housing Policy Development

**SUBJECT:** Proposed HCD State Income Limit Hold Harmless Policy

The California Department of Housing and Community Development (HCD), is soliciting review and comment on its **Proposed HCD State Income Limit Hold Harmless Policy (HH Policy)** to take effect beginning 2013 and each year thereafter when annually publishing updates to State Income Limits. These income limits are used for designated programs and projects to determine (1) an applicant's income category eligibility based on household income and size and/or (2) affordable housing cost, particularly monthly rent levels for publicly assisted affordable housing projects based on area median income.

HCD's State HH Policy is proposed to replace 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's HH policy is deemed necessary to stabilize rental income for affordable housing project developments subject to the Department's annually published State Income Limits.

**Proposed HCD State Income Limit Hold Harmless Policy:**

To preserve rental income of affordable projects subject to State Income Limits, pursuant to applicable Health and Safety Code sections, HCD proposes to implement a State Hold Harmless (HH) Policy in 2013 to maintain the highest income level (for household income categories and area median income) achieved within each county before any decrease HUD made starting in 2010 or may make in publishing its Section 8 income limit levels. The State HH Policy would take effect when publishing 2013 income limits and would (1) restore HUD decreases to several counties' household income

category levels and area median income (AMI), (2) restore rent levels and project rental income, and (3) maintain applicable income levels and AMI to their previous highest level against any HUD income category and/or AMI decreases.

California's HH Policy is intended to ensure that projects that are tied to Health and Safety Code income limits will continue to be fiscally sound and will be able to provide ongoing affordable housing to help meet the housing needs of the State's residents. HCD recognizes all levels of government and stakeholders are facing resource challenges. HCD's HH Policy, to maintain highest income limit levels and area median incomes that impact rent levels, will help protect the existing stock of affordable housing and encourage more affordable housing development.

### **Background on Hold Harmless Policy:**

Current Health and Safety Code sections link particular State and local affordable housing assistance programs (previously partially funded by redevelopment agencies) to HUD Section 8 Program Income Limits. HUD, in May 2010, eliminated its Section 8 Hold Harmless policy based on new federal law (2008 Public Law 110-98: Housing and Economic Recovery Act) precluding any rent decrease in projects funded with federal low income housing tax credit (LIHTC) and tax-exempt private activity bond funds. In discontinuing its HH Policy, HUD established a new policy to control Section 8 household income category and median incomes by applying a maximum 5 percent cap on decreases and increases to income levels.

Some local affordable housing associations, project sponsors and operators, and redevelopment agencies requested HCD to implement a policy similar to HUD's former HH policy. Early 2012, HCD convened a small working group of housing advocates, practitioners, and stakeholders to discuss a State policy to limit or preclude decreases in household income category and area median income levels to protect project rental income from any resulting decreases in rent levels.

### **Impact of HUD Elimination of Hold Harmless Policy:**

Pursuant to California Health and Safety Code Section 50093(c), HCD publishes State Income Limits tied to the Section 8 Income Limits published by HUD. Since 2010, when HUD discontinued its hold harmless policy, HCD has published lower income limits applicable to household income category levels and area median incomes. HUD noted that discontinuing its Section 8 HH policy could result in some adverse impacts regarding household eligibility, rents, and project rental income for state and local funded projects in the event of HUD decreases to some household income category levels and area median incomes. In deciding to eliminate its HH policy, HUD noted that state and local governments could consider developing their own hold harmless policy to mitigate adverse impacts on State and local housing assistance programs and projects.

In California, HUD has published various decreases in Section 8 household income category levels and/or area median income (AMI) in 25 counties (see Attachment 1 summary and Attachment 3 details). Fourteen counties had AMI decreases of which seven counties continue to have a current 2012 AMI under the highest level achieved in

2009, 2010, or 2011 (refer to AMI data in Attachment 1). Health & Safety Code Section 50053 requires that unit rents be calculated on the basis of AMI. A decrease in AMI can result in (1) reduction in unit rent and (2) reduction in project rental income. Project rental income loss can be significant based on number and type of units as projects vary in the number of units available to extremely-low, very-low, low, and/or moderate income households. Sufficient and stable project income is critical for affordable housing project operational viability and continuity.

#### **Data on Impact of HCD Restoration of Hold Harmless Policy:**

To demonstrate the impact of HUD eliminating its Hold Harmless Policy and HCD's proposal to implement a State Hold Harmless Policy, HCD has attached these reference charts and tables:

Attachment 1- Summary of HUD Decreases to County Income Levels: This attachment identifies the 25 California counties in which HUD in 2010, 2011, and/or 2012 decreased income levels for several household income categories and area median incomes (AMI). The data reveals 17 counties with a current 2012 income category and/or AMI level less than a previous year's highest level that would have been maintained had HUD not eliminated its former HH policy in 2010. Implementation of HCD's proposed State HH Policy in 2013 would (1) restore all HUD decreases to household income limit levels and area median incomes to their former highest level that in turn would restore rent levels and project rental income to previous highest levels and (2) maintain the "highest" income category and AMI level against any future HUD decreases to stabilize unit rent levels and project rental income.

Attachment 2 – Rent Level Decreases from HUD Decreases in AMI: This attachment shows estimated decreases in monthly rent (based on different household income categories and sizes and unit number of bedrooms) resulting from AMI decreases. Small rent decreases were estimated (based on AMI changes in Attachments 2A and 2B) just for the seven counties identified in Attachment 1 that still have a reduced AMI compared to a previous year's highest AMI. The State's proposed HH Policy, effective 2013, would restore AMI in all seven counties to their previous highest level and lead to restoring rents and project rental income to their previous highest level. Pursuant to Health and Safety Code Section 50093, changes in AMI impact rent levels. Decreases in HUD Section 8 "household income category" limits impact State and local program eligibility factors for applicant households.

Attachment 3 – Comparison of 2009-2012 State Income Limits Identifying Counties Impacted by HUD Decreases: This attachment compares State income limits for years 2009, 2010, 2011, and 2012 for all 25 counties impacted by HUD decreases since eliminating its HH Policy in 2010. Data is displayed by income category and household size and county area median income (AMI) showing amount of decreases and "highest" income category and AMI that HCD's proposed State HH Policy would restore in 2013 and maintain against any future HUD decreases.

**Summary of Alternatives Proposed for State Income Limit Hold Harmless Policy:**

Alternative 1: Apply State Income Limit Hold Harmless (HH) Policy identical to former HUD HH Policy to existing and future projects. For existing projects, restore highest household income category and area median income (AMI) levels to preclude any decreases from HUD annually publishing its Section 8 Income Limits. This alternative was chosen to continue the longstanding HUD HH Policy eliminated in 2010 and protect all affordable housing projects from decreases in rental income that could jeopardize project operations and viability.

Alternative 2: Apply State Income Limit HH Policy (former HUD HH Policy) to just existing projects. Future projects could be underwritten with potential for small (HUD applies 5 percent cap) future decreases in household income categories and/or AMI. This alternative would restore and preserve highest rents and rental income for existing affordable projects in which financing and operations did not account for any rent decreases. Implementation would require more administrative effort in correctly applying HH policy to different (existing vs. new) projects and may impede financing of future affordable housing projects and number of units subject to State Income Limits.

Alternative 3: Exempt extremely-low income (ELI) category from State Income Limit HH Policy for existing and future projects. Exemption for ELI households was proposed due to ELI having the lowest income of all categories and being most in need of rent relief from resetting rent levels to account for HUD decreases in AMI. Without exemption, proposed State HH Policy would keep ELI rents at higher level despite reduction in AMI and incomes of ELI households. This alternative increases administrative effort. Small decreases in ELI rent levels (refer to Attachment 2) could result in large decreases in project rental income, depending on number of ELI units, to jeopardize a project.

Alternative 4: Apply ELI exemption to existing and future projects in which non-assisted ELI households (not receiving any other rent assistance) constitute less than 10 percent of project units. This alternative further increases administrative effort. Reduction in ELI rent could still adversely impact existing rental income and project viability, and impede future projects providing a greater number of needed ELI units.

**Review and Comment Period:**






HCD is soliciting comments on its proposed State Income Limit Hold Harmless Policy. **Comment period is 30 days from Memorandum date. The Department must receive written comments on this proposed policy by end of business on the 30<sup>th</sup> day to consider before implementing the proposed policy when publishing 2013 State Income Limits late January 2013.** Please submit comments to [cahouse@hcd.ca.gov](mailto:cahouse@hcd.ca.gov).

If you have any questions, please contact the Division of Housing Policy Development at 916-445-4728. For more information on HCD income limits, see the Division of Housing Policy Development's website at <http://www.hcd.ca.gov/hpd/>.

Attachments: Enclosed are Attachment 1, Attachments 2, 2A, and 2B, and Attachment 3.

### Summary of Counties with Decreases to Income Limits Since HUD Eliminated Hold Harmless Policy Beginning 2010

This chart shows the 25 counties impacted by HUD decreases to household income categories and/or area median income based on Attachment 3 details.

	Shaded box reflects the year in which income limits reached their "highest" level that the proposed State HH Policy would maintain beginning 2013.
	Non-shaded "2012" boxes reflect counties with <u>current</u> decreased levels that proposed State HH Policy would, in 2013, increase to previous "highest" level.
	Other "blank" 2009-2011 boxes reflect no change or an increase in achieving "highest" level in subsequent year to maintain against any future decreases.
	Box with negative dollar \$ sign reflects year of HUD decrease in income category and/or area median income from previous year.
	This box shows the 7 counties with 2012 decreased AMI that HCD HH Policy would in 2013 increase to previous "highest" level to lead to small increase in rents.**

Note: HUD decreases to household "income categories" (by size) impact household program eligibility in determining a household's income category for particular State and/or local programs required to adhere to Section 8 income limits annually published by HUD.

AMI changes (+/-) impact rent levels pursuant to H&SC 50093\*

Income Category		Extremely Low				Very Low				Low				Moderate				Area Median Income (AMI)			
County	Year	2009	2010	2011	2012	2009	2010	2011	2012	2009	2010	2011	2012	2009	2010	2011	2012	2009	2010	2011	2012
Alameda											( - \$ )										
Alpine			( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )		
Amador			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )	
Contra Costa											( - \$ )										
Los Angeles					( - \$ )				( - \$ )				( - \$ )								
Marin			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )									
Monterey			( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )		
Napa													( - \$ )								
Orange			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )				( - \$ )				( - \$ )	
Plumas				( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )				( - \$ )			( - \$ )	
Riverside			( - \$ )				( - \$ )				( - \$ )					( - \$ )				( - \$ )	
San Benito				( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )	
San Bernardino			( - \$ )				( - \$ )				( - \$ )					( - \$ )				( - \$ )	
San Diego			( - \$ )		( - \$ )		( - \$ )		( - \$ )		( - \$ )		( - \$ )			( - \$ )			( - \$ )		
San Francisco			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )									
San Joaquin			( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )		
San Mateo			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )									
Santa Barbara			( - \$ )	( - \$ )			( - \$ )	( - \$ )			( - \$ )	( - \$ )									
Santa Clara			( - \$ )				( - \$ )				( - \$ )	( - \$ )	( - \$ )		( - \$ )						
Santa Cruz				( - \$ )					( - \$ )				( - \$ )								
Solano			( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )		
Sonoma												( - \$ )									
Stanislaus			( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )		
Ventura			( - \$ )				( - \$ )				( - \$ )		( - )								
Yolo			( - \$ )				( - \$ )				( - \$ )				( - \$ )				( - \$ )		

\* Health and Safety Code Section 50093(b) (paraphrased): Affordable rent including a reasonable utility allowance shall not exceed "the product of 30 percent . . . of the area median income adjusted for family size appropriate for the unit."

\*\* Refer to Attachment 2 small rent level decreases that in 2013 could be increased by HCD HH Policy increasing current smaller 2012 AMI level to highest previous level.