SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No:	SB 1032	**Hearing Date:**	3/19/2024
Author:	Padilla		
Version:	2/6/2024 Introduced		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Mehgie Tabar		

SUBJECT: Housing finance: portfolio restructuring: loan forgiveness

DIGEST: This bill authorizes the Department of Housing and Community Development (HCD) to approve the forgiveness of a department loan under specified affordable housing programs funded or monitored by HCD.

ANALYSIS:

Existing law:

1) Establishes housing programs administered by HCD to address such topics as the construction, preservation, and rehabilitation of affordable housing, homelessness, homeownership, infrastructure, and housing planning.

2) Allows HCD to approve an extension of an HCD loan, the reinstatement of a qualifying unpaid matured loan, the subordination of an HCD loan to new debt, or an investment of tax credit equity under various older HCD rental housing finance programs.

3) Allows HCD to approve an extension of an HCD loan, the reinstatement of a qualifying unpaid matured loan, or the subordination of an HCD loan to new debt or an investment of tax credit equity if HCD determines that the project will have a potential remaining useful life equal to or greater than the term of the restructured loan.

4) Allows HCD to charge a monitoring and transaction fee to cover its costs for loan extensions and transactions, and requires developer fee limitations to be consistent with specified laws and regulations, including those set by the California Tax Credit Allocation Committee (CTCAC).

5) Provides that HCD may subordinate its loan to refinance existing senior debt only as necessary for project feasibility and to reimburse borrower advances for

predevelopment costs, recent capital improvements, and recent operating deficits.

6) Authorizes HCD to restructure existing loans in specified HCD loan programs through the Loan Portfolio Restructuring Program (LPRP).

This bill:

1) Allows HCD to approve the forgiveness of a department loan under specified affordable housing programs funded or monitored by HCD.

COMMENTS:

1) *Author's Statement.* "In a time when so many people are unable to find housing that fits their budget, we should be making it easier for housing agencies to provide affordable options; not more difficult. By allowing for the forgiveness of these loans provided by HCD, this bill would help many affordable housing providers across California continue to fulfil their purpose."

2) *Affordable Housing Finance.* The state finances affordable multifamily rental housing using a combination of loans, tax credits, and private activity bonds. Unlike market rate housing, affordable housing does not have the cash-flow from rents to support traditional financing.

   Affordable housing is provided to tenants whose household income is below the area median income (AMI). To qualify, very low-income tenants must make 60% or less of the AMI and lower-income tenants must make only 80% or less of AMI. Tenants in affordable housing are only required to pay 30% of their income toward rent, so the state provides enough long term subsidy to reduce the overall debt service on a development. HCD loans serve as the permanent financing that comes in once a development is complete to take out the predevelopment and construction loans a developer took on to construct the development. HCD loans are secured with a lien in first position on the property. Developments are also subject to a 55-year recorded regulatory agreement which runs with the project. If a developer pays off an HCD loan before the covenants expire, the regulatory agreement is not extinguished and the developer must continue to provide the units at an affordability rent for the length of the regulatory agreement to lower-income tenants.

3) *HCD Loan Forgiveness.* Developers and jurisdictions with older HCD loans would like the option for HCD to approve the forgiveness of those loans to minimize their overall debt. This is particularly important for housing providers that are not utilizing tax credits and do not have the same ability to restructure their loan.

The Multifamily Housing Program (MHP)—HCD's flagship affordable housing construction program—regulations suggest that HCD does have some discretion to allow for prepayment and refinance of a loan (*i.e.*, if necessary to maintain or improve the fiscal integrity of a project, to maintain affordable rents, or to decrease rents), but not currently loan forgiveness.

4) *Loan Portfolio Restructuring Program (LPRP).* In 2012, AB 1699 (Torres, Chapter 780) authorized HCD to restructure existing loans in specified HCD loan programs, including:

   a) Rental Housing Construction Program Original (RHCP-O)
   b) The Special User Housing Rehabilitation Program (SUHRP)
   c) The Deferred Payment Rehabilitation Loan Program (DPRLP)
   d) The rental component of the California Natural Disaster Assistance Program (CALDAP)
   e) The State Earthquake Rehabilitation Assistance Program (SERA)
   f) The rental component of the California Housing Rehabilitation Program (CHRP-R)
   g) The component of the Rental Housing Construction Program funded with bond proceeds (RHCP-B)
   h) The Family Housing Demonstration Program (FHDP)
   i) The Families Moving to Work Program (FMTW)

   The restructuring of HCD's loans is intended to preserve affordable housing units that would have been lost to termination of the regulatory provisions restricting rents and occupancy, to address physical deterioration of the property, or to improve project fiscal integrity, or combination of the three.

   Restructuring a loan in this context means extending the original HCD loan term, subordination of the HCD loan or loans to a new senior loan, or a tax credit investment in the project.

   LPRP was appropriated $332.5 million to preserve and rehabilitate existing HCD-funded developments, including those with MHP loans. To qualify, developments must have expired regulatory agreements or the regulatory agreements must be set to expire by 2032.

5) *Preserving public investments.* Given the scarcity of funds available for the development of affordable housing, the high demand for funding, and the overall low supply of housing units, it could be argued that anything that jeopardizes existing public investments (*i.e.*, affordable housing) is too great of a risk.

The current bill language broadly applies to HCD loans (*i.e.,* loan forgiveness could be utilized beyond the intent of the bill). For example, if the bill were signed into law today, there is nothing stopping the consideration of loan forgiveness for a loan in year two of its term. The potential broad application of this provision could put more recent affordable housing investments at risk when loans are forgiven and/or restructured—which has the potential of increasing or changing the affordability levels of a project.

There are a number of outstanding questions that should be addressed:

a) *What are the requirements for loan forgiveness?* The bill requires that, in exchange for loan forgiveness, the borrower maintain 50% of the units at rents affordable to lower income households (80% of AMI and below). Most of the projects contemplated to be served by this program are 100% affordable and many or all have deeply affordable rents serving extremely low-income households. There is a need for some flexibility to adjust rents, but not beyond the minimum necessary. The tradeoff for loan forgiveness should not be the loss of up to half of the affordable units, the loss of deeply targeted affordable units, or increases in rents for existing tenants.

   To preserve the affordability levels, the author will accept an amendment to maintain the same number of affordable units at the same affordable housing cost as provided for in the project's regulatory agreement.

b) *When and who is eligible?* This bill allows any borrower, at any time, to request forgiveness of a loan if they can demonstrate that the loan is impeding the ability of the borrower to maintain and operate the affordable housing. Nearly any debt on a project will arguably meet that test, so there should be a higher standard that differentiates the projects identified as in need of loan forgiveness from any other project that has an HCD loan. The eligibility for loan forgiveness should also be at or near the end of the loan. The current language could allow the application for forgiveness to be made shortly after the loan was originated, which is not the intent of the bill.

   Moving forward, and before the bill reaches the Senate Floor, to address concerns that loan forgiveness would be used for anything other than legacy HCD programs with loans that are near or at the end of their term, the author has agreed to work on narrowing the language and adding guardrails (i.e., who is eligible and when are they eligible) to further align with the bill's intent.

c) *How does HCD guarantee the units remain affordable?* Through monitoring protocols in their programs, HCD is able to track compliance with affordability standards over time, safeguarding against potential increases in housing costs that could displace residents. If HCD were to consider loan forgiveness, HCD would lose the ability to monitor the ongoing affordability of the units. Forgiving loans does not absolve the obligation to uphold affordability measures; rather, it underscores HCD's commitment to preserving accessible housing options for all residents. Today, HCD charges 0.42% of the award amount every year to monitor a development. At a minimum, HCD will need to cover the cost of continued monitoring of projects and their affordability.

Moving forward, and before the bill reaches the Senate Floor, to address monitoring and affordability compliance concerns, the author has agreed to work on language to maintain HCD's monitoring responsibilities on projects authorized for loan forgiveness.

RELATED LEGISLATION:

AB 515 (Ward, 2023) — would have authorized HCD to approve the pay off of an HCD loan in whole or part, prior to the end of its term, and the extraction of equity from a development for purposes approved by HCD. *This bill was held in the Senate Appropriations Committee.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, March 13, 2024.)

SUPPORT:

California State Association of Counties (CSAC) (Sponsor)
California Coalition for Rural Housing
City of Bishop
County of Colusa
County of Imperial
County of Madera
County of Mariposa
County of San Benito
County of Santa Barbara
County of Stanislaus
County of Tulare
County of Yuba

Imperial Valley Housing Authority
Mono County California

OPPOSITION:

None received

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