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

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<b>Bill No:</b>	SB 1500	<b>Hearing Date:</b>	4/16/2024
<b>Author:</b>	Durazo		
<b>Version:</b>	3/18/2024		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Erin Riches		

**SUBJECT:** Housing: federal waiver: income eligibility

**DIGEST:** This bill prohibits the Tax Credit Allocation Committee (TCAC) and the state Department of Housing and Community Development (HCD) from taking specified punitive actions against certain projects in the City and County of Los Angeles that violate income limit requirements, unless the participant has failed to cure the noncompliance for 24 months. This bill also provides, for these projects, that a tenant satisfies income requirements if specified conditions are met.

**ANALYSIS:**

*Existing law:*

- 1) Allows a state low-income housing tax credit (LIHTC) for costs related to construction, rehabilitation, or acquisition of low-income housing. This credit, which mirrors the federal LIHTC, may be used by taxpayers to offset the tax under the Personal Income Tax, the Corporation Tax, and the Insurance Tax laws.
- 2) Establishes the Joe Serna, Jr. Farmworker Housing Grant Program (Serna Program) at HCD to finance the new construction, rehabilitation, and acquisition of owner-occupied and rental units for agricultural workers, with a priority for lower income households.
- 3) Establishes the Multifamily Housing Program (MHP) at HCD to assist the new construction, rehabilitation, and preservation of permanent and transitional rental housing for lower income households through loans to local governments and non- and for-profit developers.
- 4) Establishes the Infill Infrastructure Grant Program (IIG) at HCD to assist in the new construction and rehabilitation of infrastructure that supports higher density affordable and mixed-income housing in locations designated as infill, such as water and sewer extensions.

- 5) Establishes the Infill Infrastructure Grant Program of 2019 (IIG of 2019), which requires HCD, upon appropriation of funds by the Legislature, to establish and administer a grant program to allocate those funds to capital improvement projects that are an integral part of, or necessary to facilitate the development of, a qualifying infill project (QIP) or qualifying infill area (QIA). Establishes that the IIG of 2019 prescribes conditions that the qualifying infill project or qualifying infill area shall meet in order to be awarded, including that the project or area be located in a local jurisdiction that has submitted its annual progress reports and that has adopted a housing element that has been found to be in substantial compliance with specified law.
- 6) Establishes the Transit-Oriented Development Program (TOD) at HCD to provide gap financing for rental housing developments near transit that include affordable units as well as infrastructure improvements necessary for the development of specified housing developments near transit.
- 7) Establishes the Housing for a Healthy California Program (HHCA) at HCD to create supportive housing for individuals who are recipients of, or eligible for, health care provided through Medi-Cal. HHCA provides grants to counties for capital, rental assistance, and operating assistance, or operating reserve grants and capital loans to developers on a competitive basis.
- 8) Establishes the Veterans Housing and Homelessness Prevention Program (VHHPP), administered by HCD in collaboration with the state Department of Veterans Affairs (CDVA) and the California Housing Finance Agency (CalHFA). VHHPP focuses on housing for veterans who are homeless, or at risk of homelessness, and are in need of service such as mental health counseling, substance abuse treatment, job training, and physical therapy to address injuries.

**This bill:**

- 1) Applies to jurisdictions – which includes only the City and County of Los Angeles – for which the US Department of Housing and Urban Development (HUD) has provided a waiver to streamline and reduce barriers to entry for unhoused populations seeking entry to projects pursuant to specified programs.
- 2) Applies to the following programs administered by HCD:
  - a) Joe Serna, Jr. Farmworker Housing Grant Program (Serna Program)
  - b) Multifamily Housing Program (MHP)
  - c) Infill Infrastructure Grant Program (IIG)
  - d) Infill Infrastructure Grant Program of 2019 (IIG of 2019)

- e) Transit-Oriented Development Program (TOD)
  - f) Housing for a Healthy California Program (HHCA)
  - g) Veterans Housing and Homelessness Prevention Program (VHHPP)
- 3) Provides that for units that are restricted to 30% of area median income (AMI), a tenant shall be deemed to have satisfied the income requirement if:
- a) The tenant experienced homelessness prior to moving into the unit;
  - b) The tenant self-certifies household income at no more than 30% AMI; and
  - c) A third-party verification indicates that the tenant's income does not exceed 60% AMI.
- 4) Prohibits TCAC from taking "negative actions" against a housing credit applicant, grantee, sponsor, or developer who has determined that a tenant does not meet income requirements, unless the applicant has not cured the noncompliance within 24 months. Defines "negative actions" as:
- a) Issuing negative points on a current or future application.
  - b) Filing a Form 8823 with the Internal Revenue Service (IRS).
  - c) Imposing a financial penalty.
- 5) Prohibits HCD from taking "negative actions" against a grantee, sponsor, or developer participating in programs outlined in (2) who has determined that a tenant does not meet income requirements, unless the applicant has not cured the noncompliance within 24 months. Defines "negative actions" as:
- a) Issuing negative points on a current or future application.
  - b) Imposing a financial penalty.

**COMMENTS:**

- 1) *Author's Statement.* "Homelessness prevention and bringing unhoused individuals off of the streets are key components of combatting homelessness within the City of Los Angeles. In 2023, the U.S. Department of Housing and Urban Development (HUD) granted several waivers to the City and County of Los Angeles, allowing for greater flexibility to move Angelenos into temporary housing. The guidelines for use of these waivers, including income verification, can be difficult to verify, and if wrong, can cause housing providers to receive penalties. This can create a chilling effect where housing providers are less likely to participate in the utilization of these waivers for fear of incurring penalties. SB 1500 will change statutory guidelines for The California Department of Housing and Community Development (HCD) and the

California Tax Credit Allocation Committee (TCAC) to reduce barriers for individuals experiencing homelessness to connect with housing providers to receive permanent housing.”

- 2) *HUD waiver.* In August 2023, HUD granted a waiver to the Housing Authority of the City of Los Angeles, and the Los Angeles County Development Authority, to help expedite housing for individuals experiencing homelessness. This waiver, effective from August 21, 2023 to August 17, 2024, applies to homeless applicants receiving tenant-based assistance or projects with project based-assistance from specified programs administered by the LA housing authorities. Specifically, the waiver provides for income verification to occur for up to 60 days after an individual moves into a housing unit, rather than requiring income verification prior to move-in.

HCD guidance, issued in October 2023, specifies that income self-certification is sufficient for conditional entry into an HCD-assisted unit, but third-party income verification must be completed within 60 days of either the move-in date or the contract for the unit. The memo notes that if the self-certification process results in compliance issues, HCD will provide up to 24 months for the sponsor to make good faith efforts to abate the issue.

- 3) *The LIHTC Program.* TCAC guidance regarding the HUD waiver, issued in October 2023, notes that while the waiver does not specifically apply to the LIHTC Program, many of the projects affected by the waiver also receive LIHTC funding. TCAC is required to monitor LIHTC properties for compliance with requirements such as health and safety standards, rent ceilings and income limits, and tenant qualifications. When TCAC identifies a noncompliance issue, it is required to notify the Internal Revenue Service (IRS) using Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*. The owner must respond to TCAC within 90 days; TCAC then determines whether the owner was always in compliance, has corrected the noncompliance, or remains out of compliance. TCAC may give the owner up to six months to correct the noncompliance.

Once TCAC has filed a Form 8823, the IRS sends a notification letter to the owner. This letter states that the owner should not include any nonqualified low-income housing units when computing the tax credit under federal tax code, and that noncompliance may result in the capture of previously claimed credits. When the owner resolves the issue, TCAC files a “back in compliance” Form 8823.

TCAC guidance regarding the HUD waiver states that “failure to provide the required verification within the 60-day period noted above will result in an uncorrected Form 8823 submitted to the IRS for ‘inability to determine income eligibility’. If documentation showing eligibility is received after the 60-day period, a corrected Form 8823 will be submitted showing the household in compliance as of the day the documentation was received.”

This bill would prohibit TCAC, when it finds a project to be out of compliance with income limits, from filing a Form 8823 with the IRS unless the owner has not corrected the noncompliance within 24 months. While TCAC guidance indicates it will file a Form 8823 for income violations after 60 days, the Form 8823 instructions require TCAC to file “no later than 45 days after (a) the building was disposed of, or (b) the end of the time allowed the building owner to correct the condition(s) that caused noncompliance.” The sponsor indicates that under this bill, that period is extended to 24 months and that therefore TCAC would not be required (and under this bill, would not be allowed) to file a Form 8823 until 45 days after the 24 month period.

- 4) *Affordable housing income limits.* According to the federal government, housing is “affordable” if it costs a household no more than 30% of the monthly household income for rent and utilities. Most federal and state housing assistance programs set maximum incomes for eligibility to live in subsidized housing, and maximum rents and housing costs that may be charged to eligible residents, usually based on their incomes. HCD publishes annual tables of official federal and state income limits for determining these maximums for a variety of programs. State statutory limits are based on federal limits set, and periodically revised, by HUD. HUD’s limits are based on surveys of local AMI. The commonly used income categories are approximately as follows, subject to variations for household size and other factors:
- a) Extremely low-income (ELI): 0 to 30% of AMI
  - b) Very low-income (VLI): 30% to 50% of AMI
  - c) Low-income (LI): 50% to 80% of AMI (the term “lower income maybe be used to mean all low-income categories, 0% to 80% of AMI)
  - d) Moderate-income (Mod): 80% to 120% of AMI
  - e) Above moderate-income: (Above Mod): 120% of AMI and above

Most subsidized affordable housing developments are built for families and individuals with incomes of 60% or less of AMI; AMI is set regionally and means different things in different areas of the state.

Los Angeles County, 2023

	LI (80% AMI)	VLI (50% AMI)	ELI (30% AMI)
2-person household	\$80,750	\$50,450	\$30,300
4-person household	\$100,900	\$63,050	\$37,850

5) *Income limit expansion.* Existing law requires proof of income eligibility prior to placing an individual in a 30% AMI housing unit. This bill allows an individual to conditionally lease a unit without this up-front proof, deeming them to have the income requirement if they experienced homelessness prior to moving into the unit; self-certify their household income; and a third-party verification demonstrates that they have household income that does not exceed 60% AMI two years after moving into the unit. The 60% AMI provision provides flexibility to protect against an individual being evicted because they are making more than 30% AMI when the 24-month period ends. However, this provision also potentially narrows the supply of 30% AMI units. *Since the stated purpose of the federal waiver is to expedite housing placement of individuals experiencing homelessness, moving forward the author may wish to consider a slightly lower upper threshold.*

In addition, one of the conditions a tenant must meet in order to remain eligible for a 30% AMI unit is that “the tenant experienced homelessness prior to moving into the unit.” This would potentially enable an individual to qualify if they make 60% AMI and have experienced homelessness at any period in their life. *To ensure that this bill remains focused on the population currently experiencing homelessness, as targeted by the HUD waiver, moving forward the author may wish to consider amending this provision to reference the definition of homelessness from the state’s Homeless Housing, Assistance, and Prevention (HHAP) program [HSC 50216(i)].*

6) *2/3 vote requirement.* Because Legislative Counsel has determined that this bill expands the projects eligible to receive benefits from a continuously appropriated fund, this bill requires a 2/3 vote.

7) *Next!* This bill has also been referred to the Senate Military and Veterans Affairs Committee.

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, March 10, 2024.)

**SUPPORT:**

Mayor Karen Bass, City of Los Angeles (Sponsor)

**OPPOSITION:**

None received.

**-- END --**