



November 4, 2009

Regulations Division  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
Room 10276  
451 Seventh Street, SW  
Washington, DC 20410-0500

RE: Request for Comments on Ending "Hold Harmless" Policy in Calculating Low Income Limits Under Section 8 of the United States Housing Act of 1937  
Docket No. FR-5323-N-021

To Whom It May Concern:

Thank you for the opportunity to comment in response to HUD's October 7, 2009 notice on whether HUD should discontinue its "hold harmless" policy with respect to Section 8 income limits. The National Council of State Housing Agencies (NCSHA) represents the nation's state Housing Finance Agencies (HFAs), which administer a wide range of affordable housing and community development programs, including tax-exempt Housing Bonds, the Low Income Housing Tax Credit (Housing Credit), HOME, Section 8, downpayment assistance, and state housing trust funds.

HUD's proposal to suspend the hold harmless policy for Section 8 income limits in Fiscal Year (FY) 2010 would create unintended negative consequences for the Housing Credit, single-family and multifamily Housing Bond programs, HOME, and other affordable housing programs that combine federal, state, and/or local funding to create affordable housing for low-income families.

We urge HUD to eliminate the hold harmless policy only for Section 8 assistance and other direct rental subsidy programs or to postpone any decision to eliminate the hold harmless policy until there has been more opportunity to consider and address its potentially negative consequences.

NCSHA understands HUD's rationale for modifying its hold harmless policy for the Section 8 program and its desire to have a separate set of limits for the Section 8 program that accurately reflect area incomes. NCSHA shares HUD's goals of making sure its income limits reflect real area incomes as accurately as possible and its resources are focused on those who need them most.

Eliminating HUD's hold harmless policy, however, could negatively affect properties with rent and income policies tied to HUD's Section 8 income limits. In FY 2010, we expect Section 8 income limits to decrease across the country. Properties funded with HOME, state housing trust funds, Community Development Block Grants (CDBG), and other sources contractually tied to Section 8 income limits, including many HUD-insured properties, would face serious cash flow issues, if they remain tied to these limits.

The economic viability of thousands of properties nationwide may be jeopardized by eliminating HUD's hold harmless policy. We are deeply concerned that if assisted housing properties cannot manage their cash flow, their ability to serve low-income residents in need of affordable housing may be compromised. In addition, lenders and investors will be less likely to invest in affordable housing properties where rental income may decline after their initial investment.

NCSHA is also concerned about the effect of HUD's proposed policy on managing and monitoring properties assisted with subsidies tied to HUD's Section 8 income limits. Owners and managers must comply with the strictest income and rent limits imposed by any funding source. The more separate limits they have to consider and track, the more difficult the administrative burden and the higher the associated costs for each development.

If single-family Housing Bond program income limits decrease—as they would if HUD were to eliminate its hold harmless policy—access to affordable homeownership might be reduced in affected areas. In addition, potential homebuyers who thought they would be eligible for such program would no longer be eligible, even if their incomes did not change.

One option we recommend HUD consider is establishing one set of limits (without the hold harmless policy) for Section 8 assistance and other direct rental subsidies and another set of limits (with the hold harmless policy) that applies to all other affordable housing programs. This would be simpler for residents, property managers, potential homebuyers, and developers, and it would help protect the continued financial stability of affected developments.

Thank you for your consideration of our comments. Please do not hesitate to contact us if we can provide additional information.

Sincerely,



Garth Rieman  
Director, Housing Advocacy and Strategic Initiatives