



August 11, 2022

Southern California Association of Governments
900 Wilshire Blvd., Ste. 1700
Los Angeles, CA 90017

RE: RHNA Reform

Dear SCAG Staff,

Public Law Center (“PLC”) is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families across Orange County. We write on behalf of individuals in need of affordable housing in Orange County to provide stakeholder input to the Southern California Association of Governments’ (“SCAG”) regarding its RHNA Reform effort.

Regional Determination

The housing element update process is intended to ensure the current and future housing needs of persons at all income levels are met while reducing the impacts of long commutes on the environment.¹ As part of this process, the State works closely with each council of governments to determine each region’s existing and projected housing need and issue a regional housing need allocation (“RHNA”) to each region.² In determining each region’s RHNA, the State relies on widely available data produced by the Department of Finance and regional data provided by each council of governments.³

The benefit of using data from the American Community Survey (“ACS”) is that it is gathered by the U.S. Census Bureau and is objective, unbiased, and has no partisan influence. ACS data is also gathered on a regular basis across the country. This consistency and wide scope is beneficial as it allows parties to track changes over time and compare data to other areas of the State and country. Data from private sources, such as banks and real estate entities, would not be a better alternative to ACS data because it may be more subjective and would be vulnerable to stakeholder influence.

Additionally, it is not necessary to minimize “double-counting” of overcrowded and cost-burdened households. Overcrowding often means that multiple households are living in one housing unit because they cannot afford to live separately. For example, one overcrowded unit may be housing three generations of one family. The grandparents, parents, and adult children cannot afford to live separately, so they contribute to one large, expensive rental unit. To reduce this overcrowding, they would need to move out to three affordable units, which may need to be affordable at different income levels. Thus, “double-counting” is not an artificial inflation of the housing need but a necessity to capture these households.

¹ Cal. Gov Code § 65584(a).

² Cal. Gov. Code § 65584(b).

³ Cal. Gov. Code § 65584.01(a)-(b).

Finally, a panel of experts should not be authorized to review regional determinations from HCD before they are finalized. HCD is a State agency that is meant to be unbiased and impartial. Allowing a group of private individuals to review and possibly invalidate State action creates an opportunity to politicize the housing element process. The use of outside experts should be limited to regional councils gathering regional data required by Government Code Section 65584.01(b)(1).

Methodology/Distribution

Each council of governments is required to develop a methodology to distribute the RHNA to jurisdictions within the region pursuant to Government Code Section 65584.04. This “formulaic approach” is statutorily required for all regions in California, regardless of one region’s preference for a different approach. This standard approach distributes the RHNA to jurisdictions in an equitable and consistent manner across the State. Therefore, we do not support removing the requirement to create a methodology for any region.

Further, we do not support jurisdictions identifying their own housing need. The housing element process was created because the State’s housing needs were not being met. Allowing jurisdictions to identify their own housing need would invalidate the housing element process and the State’s housing crisis would continue at the expense of lower-income households.

Appeals

The bases for appeal of a RHNA allocation is limited to circumstances identified in Government Code Section 65584.05(b). Jurisdictions have an opportunity to describe their unique circumstances as part of the development of the regional council’s methodology.⁴ Because jurisdictions already have reasonable opportunity to participate in the RHNA allocation process, we do not support expanding the bases of appeal. Further, we specifically do not support making the RHNA appeals process more subjective because the members of the RHNA appeals committee are representatives of local jurisdictions. Allowing members of the committee to evaluate RHNA appeals with more subjectivity would open the appeals process to more politicization and partisanship.

Conclusion

The RHNA allocation process is an opportunity for the State and regional councils to promote the development of housing that meets the needs of California’s residents, including the need for housing that is accessible to seniors, families, and workers, as well as extremely low-, very low-, and low-income households. We encourage SCAG to consider the intent behind RHNA requirements and to work to strengthen the RHNA process rather than weaken it in favor of local governments. We look forward to working with SCAG and HCD in this effort to ensure that the housing needs of all residents are addressed.

Sincerely,

THE PUBLIC LAW CENTER, BY:



Alexis Mondares, Housing and Homelessness Prevention Unit, Staff Attorney

⁴ Cal. Gov. Code § 65584.04(e)(2).