

APPEARANCES

Crystal Alvarez, Program Analyst

Also Present:

Maria Stamas, Natural Resources Defense Council and the California Housing Partnership Corporation

Mari Rose Tarnic, Asian Pacific Environmental Network, an organization under the SB 535 Coalition

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P R O C E E D I N G S

10:18 a.m.

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2
3 MS. ALVAREZ: *[Good morning. I am Crystal*
4 *Alvarez with the Department of Community Services and*
5 *Development. I am the Hearing Officer for today's public*
6 *hearing]* on the 2015 Low-Income Weatherization Draft
7 Program Guidelines.

8 Today is Monday, December 15, 2014. The time is
9 10:18.

10 We are assembling at the California Secretary of
11 State Office, specifically the Building Auditorium, to
12 conduct a public hearing to receive testimony from the
13 interested parties regarding the proposed Low-Income
14 Weatherization Draft Guidelines for the 2015-2016 Program
15 Years.

16 The Draft Program Guidelines were released on
17 December 1st, 2014.

18 The Draft Program Guidelines were revised on
19 December 8th, 2014, to set income eligibility for Solar PV
20 at 80 percent of the area median income, or AMI. AMI is
21 subject to annual changes based upon the U.S. Department of
22 Housing and Urban Development's income guidelines.

23 The California Department of Community Services
24 and Development developed the Draft Program Guidelines for
25 the implementation for its Low-Income Weatherization

1 Program funded by the Greenhouse Gas Reduction Fund. With
2 program oversight and direction provided by the California
3 Air Resources Board, CSD, and a network of LIWP Providers
4 will offer energy efficiency and renewable energy services
5 to reduce Greenhouse Gas emissions and provide important
6 co-benefits to quality -- for qualified low-income
7 households in 1,993 homes in disadvantaged communities, as
8 identified by the California Environmental Protection
9 Agency. These disadvantaged communities are located within
10 29 of the 58 California counties.

11 The Draft Guidelines describe how and where CSD
12 will implement LIWP. Please note that CSD will issue
13 separate Program Guidelines for Multi-Family dwellings in
14 June of 2015.

15 If our first testimony can please come forward,
16 Maria.

17 MS. ANDRY: Say the last name. Say the last
18 name.

19 MS. ALVAREZ: Stamas.

20 MS. ANDRY: Okay.

21 MS. ALVAREZ: Did I say that right?

22 MS. ANDRY: Yeah.

23 MS. STAMAS: Hi. My name is Maria Stamas, and
24 I'm here on behalf of the Natural Resources Defense Council
25 and the California Housing Partnership Corporation.

1 And I wanted to first express support generally
2 for the Draft Guidelines that the Department of Community
3 Services and Development have put together and then offer a
4 number of recommendations.

5 So, to start, as regards categorizing
6 single-family and the two separate multi-family programs, I
7 wanted to make a comment that, while we support broadly
8 thinking about the multi-family sector in terms of the
9 actual attributes of the buildings and we also recognize
10 that there will probably be a number of buildings that fall
11 in a gray area where they either have separate central
12 heating/cooling for each unit but a central water heating
13 or vice-versa, so we wanted to recommend for program
14 efficiency that we merge both multi-family programs into
15 one offering or an alternative allow building owners whose
16 properties don't clearly fall into either category to be
17 able to choose which one is most appropriate for them.

18 Secondly, as regards income eligibility
19 standards, we -- both our organizations, CHPC and NRDC,
20 have had a lot of experience working with the Public
21 Utilities Commission on their Low-Income Energy Saving
22 Assistance Program and have found that extensive income
23 eligibility standards can sometimes be a barrier and become
24 very costly and onerous. So we want to just make sure that
25 we're doing that in as streamlined a fashion as possible.

1 So a couple of recommendations towards that: One
2 is that we explore using the CalEnviroScreen, maybe a top
3 percentage of it, to categorically enroll participants, and
4 also, at a minimum, kind of trying to standardize the
5 income eligibility standards for both the solar and the
6 energy efficiency program. So we're recommending that, if
7 we maintain the current structure of using 80 percent
8 average median income for the solar program, that that also
9 apply to energy efficiency.

10 And part of that reasoning is because we also
11 want to see both programs a little bit more aligned so that
12 it's required that if a house gets solar that it also have
13 already adopted energy efficiency measures to make sure
14 that the solar is right sized for the building and because
15 energy efficiency is generally a more cost-effective way to
16 reduce energy use.

17 Also as regards cost effectiveness, we would like
18 to see a little bit more information on what CSD is
19 proposing to do both in terms of its savings methodology
20 and calculations, and then just general, what measures
21 qualify or don't. And we -- in the absence of more
22 information, we'd just also like to recommend that any
23 cost-effectiveness test be applied at the portfolio level
24 instead of individual-measure level.

25 We'd also like to recommend that the program at

1 least subsidize or offer audits at the beginning and at the
2 conclusion of any energy efficiency retrofit. So this
3 would be -- the initial audit would determine a baseline
4 for quantifying energy savings, and then the second audit
5 would be at the conclusion of the installation and it would
6 confirm the final level of savings.

7 And, similarly, to other more comprehensive
8 energy efficiency programs that the public utilities
9 commission offers, we'd recommend that the audit be
10 performed by a Cal HERS II rater or a RESNET rater or
11 someone with equivalent certified third-party status.

12 And then also as regards cost effectiveness and
13 savings estimates, we'd like to recommend that the CSD and
14 ARB, Air Resources Board, work closely with the California
15 Technical Forum, which is a collaborative of experts who
16 engage in transparent technically robust process for
17 developing savings estimates across California Energy
18 Efficiency Programs that coordinate well and that are
19 consistent.

20 And then, finally, we'd just like to recommend
21 that the process for the Guidelines development be as open
22 and transparent as possible and that before issuing any
23 substantially modified Guidelines, or before adopting any
24 substantially modified Guidelines, that there be some
25 soliciting of public stakeholder input, whether that's a

1 formal hearing or just informal comments. We think it's
2 important that stakeholders have input throughout the
3 process.

4 So that concludes my comments, and I look forward
5 to working with CSD to make the program as beneficial as
6 possible.

7 MS. ALVAREZ: Thank you very much for your
8 comments. We'll take those under submission as we draft
9 our final version of our Guidelines and definitely
10 appreciate your suggestions. But I notice you had a
11 script, also, if you could e-mail that to us just so that
12 if there is anything that we didn't catch today, that we're
13 able to make sure that we take all your comments under
14 consideration.

15 MS. STAMAS: Great. Thank you.

16 MS. ALVAREZ: And I believe we have another
17 speaker testimony. Maria Rose Tarnoc. Did I say that
18 correctly?

19 MS. TARNOC: It's Mari Rose Tarnoc.

20 MS. ALVAREZ: Mari Rose Tarnoc.

21 MS. TARNOC: Close.

22 MS. ALVAREZ: Mari Rose Tarnoc.

23 MS. TARNOC: Good morning.

24 MS. ALVAREZ: Good morning.

25 MS. TARNOC: I'm driving in from Oakland. So I'm

1 representing the SB 535 Coalition, so that 20 or so
2 organizations send their regards and are sending their
3 comments along with me.

4 MS. ALVAREZ: Okay. Thank you for making it out
5 here.

6 MS. TARNC: Sure. So I'm Mari Rose Tarnc. I'm
7 the State Organizing Director for APEN, the Asian Pacific
8 Environmental Network, and we're one of the leaders of the
9 SB 535 Coalition, who is making sure that the successful
10 implementation of SB 535 happens.

11 And I'm trying to figure out -- we have a whole
12 letter that we are continuing to get sign-ons for. I don't
13 know if I should just summarize what's in the letter, or do
14 you have time for me to read most of it, which will
15 probably take, I don't know, four to five minutes.

16 MS. ALVAREZ: I mean, it's your preference. It's
17 public testimony, so if you feel that your comments are
18 better, maybe, accepted by reading the letter or if you
19 just want to touch on the highlights, either way is
20 acceptable.

21 MS. TARNC: Okay. Great. So the SB 535
22 Coalition and Allies appreciate the hard work of CSD in
23 developing the Draft Guidelines for the LIWP. We see this
24 program's ability to deliver strong climate, job, and
25 economic benefits to all Californians and especially the

1 most disadvantaged communities and households in
2 California.

3 We affirm and really like the goals that you've
4 set out for the program to, one, maximize GHG reductions;
5 two, train and hire residents; and, three, maximize savings
6 for low-income households. And we applaud the decision for
7 you all to spend a hundred percent of the funds to meet the
8 SB 535 requirements.

9 Given our expertise on the ground with
10 environmental justice communities and energy programs, we
11 offer the following comments on the LIWP as you finalize
12 the Guidelines. The following suggestions were developed
13 by the SB 535 Coalition's Energy Committee, whose members
14 include at least 15 organizations.

15 Our comments are grouped under five categories.
16 They're around program eligibility, jobs and workforce
17 development, quantification of benefits and co-benefits,
18 project types, and anti-displacement provisions.

19 So the first, under program eligibility, we are
20 interested in improving access of the LIWP program to
21 low-income households through these ideas: One is to
22 automatically qualify households in the top 5 to 25 percent
23 of CalEnviroScreen census tracts. Paperwork, we've seen,
24 is a big barrier to entry into the program. And so this
25 location screen, which already has low income as an

1 indicator in it, should be sufficient. It would be -- it
2 would expedite the eligibility process and benefits and
3 this flexibility would also avoid the need to create new
4 processes;

5 Two, expand the entire program's income
6 eligibility to 80 percent of area median income, as is
7 currently defined for the solar programs. This is a modest
8 increase from your 60-percent target that will open up
9 eligibility to more low-income households.

10 Under jobs and work force development, there are
11 eight points, and I will summarize them:

12 We have established a wage for -- for the LIWP
13 projects;

14 Two, track and report the demographic
15 characteristics, including race, gender, educational
16 attainment, and zip code residency of all workers;

17 Three, report how many workers were hired into
18 full-time jobs;

19 Four, set specific local targeted hire goals.
20 The first priority is to hire disadvantaged residents we
21 pick in the community;

22 Five, work with community organizations or other
23 local institutions that have a proven track record of
24 placing disadvantaged workers into career-path jobs, and
25 that these organizations have the capacity to provide

1 hands-on training that are accessible to the disadvantaged
2 residents;

3 Six, report the number of workers trained;

4 Seven, be clear about how providers will be held
5 accountable for workforce development goals;

6 Eight, use best-value contracting.

7 And then the third section is around
8 quantification of benefits and co-benefits. We have three
9 different standards that we think are -- that could be --
10 that are good that we've seen, including the California
11 Technical Forum's cost benefit analysis of standardized
12 energy savings;

13 Two, there is BPI standards around performance;

14 Three, Energy Upgrade. California has standards
15 that we've seen that are good.

16 Fourth section around project types. We think
17 these ideas strengthen the program and expand the reach
18 into disadvantaged communities. You already have one of
19 them, which is the CSD's requirement that all homes
20 receiving Solar PV will first be assessed for
21 weatherization services to further reduce GHGs. And then,
22 two, allow non-residential buildings to be eligible for
23 weatherization and solar, such as churches, community
24 centers, and small businesses.

25 We understand that your strength and where you're

1 working from is around residential programs for now, and we
2 think it can be and should be expanded to other buildings
3 in disadvantaged communities, including the ones that I
4 mentioned.

5 And then the last around -- section around
6 anti-displacement. These proposed changes that we have
7 will help ensure that projects funded by LIWP provide
8 benefits to existing lower-income residents rather than
9 result in their physical or economic displacement. First
10 is provide additional points in your granting program for
11 projects located in jurisdictions with policies or programs
12 designed to prevent the displacement of lower-income
13 residents and businesses of the project area and community.

14 We think that these policies shall be a threshold
15 requirement for future funding rounds. We also recognize
16 that not all projects will be located in neighborhoods
17 where low-income residents face current or future risk of
18 economic displacement, including in many rural areas, and
19 so exemptions for communities not facing displacement risk
20 can be made.

21 Applicants may provide evidence for agency review
22 demonstrating that there is no economic displacement risk
23 for the next 10 years in the project area and community or
24 as a result of the project.

25 And then, two, under anti-displacement, we think

1 you should target homes and units with affordability
2 covenants extending at least 5 to 10 years from date of
3 energy improvements for these projects. Because one of the
4 examples that we're seeing as threats on the ground are
5 that privately-owned residences or buildings, for instance,
6 if they have Section 8 housing where the lower-income folks
7 are occupying those units, if the landlords make those
8 improvements, they may want to charge more for those units
9 and thus take out the Section 8 eligibility or benefit to
10 the residents.

11 And so targeting buildings that are -- with
12 affordability covenants, such as affordable homes,
13 affordable housing, we think are a good place for you all
14 to focus.

15 And, lastly, we recommend you visit these
16 Guidelines in future years. While we also are interested
17 in quickly putting these program funds to use, we will
18 learn how to better benefit disadvantaged communities or
19 address problems after the first year and successive years
20 of implementation. The Guidelines should be revisited next
21 year with a robust public process to adopt the amendments.

22 And, so far, the letter is signed by 19
23 organizations. And just in my drive from Oakland to here,
24 I got another five more. And so we will make sure to
25 submit these with all the full signatures by 5:00 p.m.

1 today.

2 MS. ALVAREZ: Perfect. Thank you so much.

3 MS. TARNC: Thank you.

4 MS. ALVAREZ: We really appreciate you getting
5 other -- you know, input from other agencies as well so
6 that we kind of keep our ear to the ground.

7 MS. TARNC: Thank you.

8 MS. ALVAREZ: Thank you for your comment.

9 Is there any further testimony?

10 (No audible response.)

11 MS. ALVAREZ: It appears that there is no further
12 comment. It is now 10:35. The public hearing is
13 considered closed. There will be -- CSD will receive
14 written testimony until 5:00 p.m. today.

15 (Whereupon, the State of California Department of
16 Community Services and Development Public Hearing on
17 the Low-Income Weatherization Program Guidelines
18 concluded.)

19 -oOo-

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TRANSCRIBER'S CERTIFICATE

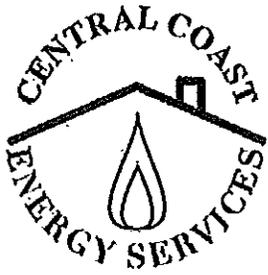
I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me; that the bracketed testimony at the beginning of the hearing was inserted as requested, however, it was not a part of the verbatim recording as received by me, a certified transcriber and a disinterested person; and that said transcript was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of January, 2015.



Kelly Farrell
Certified Transcriber
AAERT No. CET**D-772



Central Coast Energy Services, Inc.

PO Box 2707
Watsonville, CA 95077
831-761-7080

Crystal Alvarez
State of California
Department of Community Services and Development
2389 Gateway Oaks Dr Ste. 100
Sacramento, CA, 95833
Fax (916) 263-1406

December 15, 2014

Re: Comments on DRAFT Low-Income Weatherization Program Guidelines (Updated 12/8/2014)

Please accept these comments regarding the DRAFT Low-Income Weatherization Program (LIWP) Guidelines (Updated 12/8/2014).

I am the Executive Director of Central Coast Energy Services, a Low Income Home Energy Assistance (LIHEAP) and Department of Energy (DOE) Weatherization Assistance Program (WAP) services provider in Monterey, San Benito, Santa Cruz and San Mateo counties under contract to the Department of Community Services and Development (CSD). I have been associated with these programs and other low income energy efficiency programs in California for over 17 years.

Goals & Ratios

A major concern with the weatherization element of LIWP is setting and achievement of goals. The program and goals (energy savings or greenhouse gas reduction to dollars spent ratios) are modeled strictly after the DOE program. California received a huge increase in DOE WAP funding from the American Reinvestment and Recovery Act (ARRA). This program served to provide huge energy savings with minimal overhead and delivery costs in many states, but California was not one of them. The program provided needed jobs and local investment, but thousands of low income homes were provided only the most basic of services. It is well documented that the DOE program is not matched to the unique needs of California and ignores that we live in a more temperate climate with economic conditions that vary tremendously from the rest of the nation. We may expect the same poor goal achievement from the LIWP program or any program based on the needs of other states. If California wants to reduce energy use to a greater extent than what has already been achieved in low income households, then it will cost more than it has in the past because we have already implemented the less expensive measures in many homes through not only the LIHEAP and DOE WAP programs, but the California Public Utilities Commission (CPUC) mandated Energy Savings Assistance Program (ESAP). The main goal of the LIHEAP WAP program is to assure health and safety and does not require achievement of a certain cost to benefit ratio in order to provide services to low income households. Every year the remainder of the programs are tightened down to make the most of "leveraging" opportunities. Leveraging does not mean that costs are reduced for installation, but are shifted to another funding source. Continuing this practice will not lead to greater energy savings, but will

require more visits to more households to install less measures, as the DOE ARRA program showed clearly.

Goals should be achievable and based on local climate and dwelling characteristics and not on a statewide basis without regard to local differences.

Dependence on LIHEAP

LIHEAP is a health and safety program with limited funding that targets "the neediest of the needy" for service. It is clear that the goals set by the Air Resources Board (ARB) per funding dollar can't be met without using LIHEAP funding. In many areas, this may focus LIHEAP services not on the neediest of the needy but on only those dwellings in Disadvantaged Community (DAC) census tracts where maximum carbon reduction to investment ratios may be achieved. The guidelines should address ways to avoid or balance this possibility.

Disadvantaged Communities Allocations

The Draft Guidelines state that "CSD will allocate LIWP weatherization and solar water heating funding to LIWP Providers according to a "Three Factor Formula" except when a fourth factor is necessary in order to ensure proper ratios for leveraging with LIHEAP." The application of this undefined fourth factor may move drastically from the intent envisioned by the legislature for the use of these funds in areas identified with CalEnviroScreen by shifting funds out of one DAC and into another of less need. Is this equitable?

Eligibility within Disadvantaged Communities Allocations

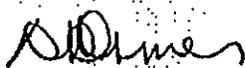
Greater benefit to DACs would be realized with dwelling eligibility based not solely on LIHEAP program criteria, but on location within a DAC target census tract. This would allow for benefit focused clearly on those areas identified through CalEnviroScreen. This has been allowed in the CPUC ESAP program and is commonly known as the Whole Neighborhood Approach. Further, it may be the only way to achieve reduction goals in some areas that have been previously targeted with low income energy efficiency programs.

Program Design – Conflict of Interest Protection

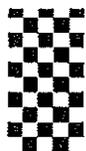
In the continuing development of this program, special caution should be used in engaging contractors with competing interests. RHA, Inc. is a contractor to Pacific Gas and Electric Company (PG&E) for the ESAP program. A successful LIWP program may adversely impact the success of PG&E's ESAP program administered by RHA.

Every effort should be made to be sure that LIWP funds contribute to energy efficiency and greenhouse gas reduction and do not simply displace currently available programs.

Thank you,



Dennis Osmer
Executive Director
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Change. Not Charity.

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DATE: December 15, 2014

TO: Community Services and Development

ATTN: Crystal Alvarez, Program Analyst

FAX: (916) 263-1406

FROM: Michele Prichard

RE: Public Comment Letter on the Low-Income Weatherization Program Guidelines Draft.

of PAGES INC. COVER: 3

MESSAGE:

Please enter the following Comment Letter into the public record, submitted by the Liberty Hill Foundation; Climate Resolve; and the Emmett Institute on Climate Change and the Environment, UCLA School of Law, for the public hearing on the Low-Income Weatherization (LIWP) Draft Program Guidelines.



Change. Not Charity.

THE EMMETT INSTITUTE
ON CLIMATE CHANGE AND THE ENVIRONMENT



Jason Wimbley, Chief Deputy Director
Department of Community Services and Development
2389 Gateway Oaks Drive, Ste. 100
Sacramento, CA 95833

December 15, 2014

Dear Mr. Wimbley and the Department of Community Services and Development:

We submit this letter to express our response and recommendations to the recently released guidelines for the Low-Income Weatherization Program. We recognize that this program represents a significant investment in California's disadvantaged communities (DACs) and appreciate the efforts made by CSD to ensure that this program both addresses energy conservation and the increasingly critical issues of environmental pollution and public health faced by low-income families.

The \$75 million allocated to LIWP represents over 25% of the total SB 535 funds allocated for DACs and almost 90% of the funds to be spent within DACs.¹ Therefore, if the intentions of SB 535 are to be upheld, it is critical that every effort is made to maximize the beneficial outcomes received by environmentally and economically overburdened neighborhoods. The weatherization and solar power programs within LIWP are significant steps toward achieving that goal; however, in our opinion, *a substantial opportunity to conserve energy and create cost savings for low-income households is lost with the omission of cool roof conversions from the program.*

Cool roofs are built of material that reflects, rather than absorbs, sunlight. They can be as much as 50 degrees cooler on their surface, and can provide interior temperatures several degrees lower than traditional roofs.² These benefits could create public health benefits by reducing heat exposure, increase energy savings in Los Angeles by more than \$30 million annually, and reduce peak energy demand, thus lowering the risk of power outages and decreasing air-borne pollutants from power production.³

CSD should follow the example of the City of Los Angeles which, in 2013, passed a residential cool roof ordinance requiring all new and renovated rooftops to be made of reflective material to help address the severe urban heat island effects that can raise temperatures by as much as five degrees as compared to outlying rural areas.⁴ Partnerships with utility companies should be leveraged to take advantage of existing subsidies such as LADWP's Cool Roof Rebate which has

¹ CalEPA, Air Resources Board. Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies, p.14. November 3, 2014.

² LADWP website: <http://www.ladwpnews.com/go/doc/1475/2065902/LADWP-s-Cool-Roof-Rebates-Reduce-Costs-and-Save-Energy>

³ Cara Horowitz, *Bright Roofs, Big City: Keeping L.A. Cool through an Aggressive Cool-Roof Program*, Pritzker Policy Brief No.2, 6 (Emmett Institute on Climate Change and the Environment, 2011).

⁴ Akbari et al., "Cool Surfaces and Shade Trees to Reduce Energy Use and Improve Air Quality in Urban Areas," *Solar Energy* 70(3) (2001).

already been applied to over 700,000 square feet of single-family and multi-family residential cool roof materials.⁵

Finally, the inclusion of cool roofs into LIWP could increase the opportunities for local hiring programs and take advantage of existing work crews already servicing individual structures, especially in the case of the case of solar panel installation that could be combined with rooftop renovations as part of a more complete retrofitting process.

The undersigned organizations have focused extensively on environmental concerns: The Liberty Hill Foundation provides grants and technical assistance to community organizations in Los Angeles County working for social, economic and environmental justice; Climate Resolve is dedicated to creating real, practical solutions to meet the climate challenge, including their "Hot City, Cool Roofs" campaign to improve the climate resilience of Los Angeles; and the UCLA Emmett Institute on Climate Change and the Environment is the leading law school center focused on critical environmental issues and has contributed to reports quantifying the benefits of cool roofs including the reduction of energy use, the lowering of carbon emissions, and protection of California's limited water supply.⁶

We hope that you will consider the inclusion of cool roofs into LIWP to more fully address the fundamental issues of high energy consumption and related costs, increased carbon emissions and exposure to air-borne pollutants faced by California's most vulnerable communities.

Sincerely,

Michele Prichard
Director, Common Agenda
Liberty Hill Foundation

Jonathan Parfrey
Executive Director
Climate Resolve

Cara Horowitz
Co-Executive Director
Emmett Institute on Climate Change and the Environment, UCLA School of Law

⁵ *Supra*, note 2.

⁶ Garrison, Noah, Cara Horowitz, Chris Ann Lughino, Jon Devine, and David S. Beckman. *Looking Up: How Green Roofs and Cool Roofs Can Reduce Energy Use, Address Climate Change, and Protect Water Resources in Southern California* (Natural Resources Defense Council, 2012).

December 15, 2014

Jason Wimbley, Chief Deputy Director
Department of Community Services and Development
2389 Gateway Oaks Drive, Ste. 100
Sacramento, CA 95833
Fax 916-263-1406

Re: Guidelines for the Low Income Weatherization Program

Dear Mr. Wimbley and the Department of Community Services and Development,

The SB535 Coalition and our allies appreciate the hard work of CSD in developing the draft guidelines for the Low Income Weatherization Program (LIWP). We see the ability of this program to deliver strong climate, job and economic benefits to all Californians, especially the most disadvantaged communities (DAC) and households.

We affirm the goals of your program to maximize GHG reductions, train and hire residents from disadvantaged communities, and maximize savings to low-income households. We applaud the decision to spend 100% of funds for DAC to meet the SB 535 (de Leon) requirements. You are on the right path to track and report these various benefits to the public.

Given our expertise on the ground with environmental justice communities and energy programs, we offer the following comments on the LIWP as you finalize the guidelines. The following suggestions were developed by the SB 535 Coalition Energy Committee whose members include APEN, CA Black Chamber, CEJA, CHPC, EDF, Green Education, Greenlining, GRID Alternatives, NRDC, PACE, Rising Sun Energy, SBCC Thrive LA, SCOPE, Sierra Club.

Program Eligibility

We are interested in improving access of the LIWP program to low-income households through these ideas:

1. Automatically qualify households in the top 5-25% of CalEnviroScreen (CES) census tracts. Paperwork is a big barrier to entry into the program, so this location screen (where low income is already an indicator) should be sufficient. It would expedite the eligibility process and benefits. The flexibility would also avoid the need to create new processes.
2. Expand the entire program's income eligibility to 80% of the area's median income (AMI) as is currently defined for the solar programs. This is a modest increase from your 60% target that will open up eligibility to more low-income households.

Jobs and Workforce Development

While it is great that CSD is incorporating jobs and workforce development issues into its guidelines, it needs specific goals and enforcement mechanisms:

1. Establish a wage floor for LIWP projects to ensure that investments create good quality, career-path jobs that employ skilled workers and deliver quality work to achieve the full energy savings and carbon reduction potential of investments.
2. Providers should be required to track and report on demographic characteristics including race, gender, educational attainment, and zip code of residency of all workers to ensure that residents of disadvantaged communities are truly gaining access to LIWP jobs. CSD can use DAC data to identify specific low-income neighborhoods, or census tract data regarding income in lieu of requiring income verification from workers.
3. In addition to tracking and reporting demographics of workers hired, Providers should be required to report how many workers were hired into full time vs. part time/on call positions, number of work hours performed by each worker, and the wages and benefits provided to each worker. In assessing whether a Provider's contract should be renewed, the quality of jobs provided to workers should be considered in addition to other factors.
4. CSD needs to set specific local/targeted hire goals for the employment of disadvantaged residents by LIWP Providers. Goals could be stated as a number or percent of work hours performed by disadvantaged residents. CSD should also be clear that the first priority is to hire disadvantaged residents from the community being served (tier 1), and if none are available to fill the positions then residents of any designated disadvantaged community may be hired (tier 2). The City of Berkeley Community Workforce Agreement and the Port of Oakland PLA are two examples of what such a policy might look like.
5. CSD should work with community organizations or other local institutions that have a proven track record of placing disadvantaged workers in career-track jobs, that currently have the capacity to provide hands-on training, and that are accessible to disadvantaged residents, to prepare these individuals for LIWP work. CSD currently trains in very few locations (for example the Stockton training center serves the entire Bay Area), which makes it difficult for many disadvantaged workers to access the training that is required to perform low-income weatherization work. In the Bay Area, there are successful training centers like Rising Sun Energy Center, which are much closer to DACs there. Another example, the Pacific Asian Consortium in Employment (PACE) in LA, located in a DAC has a WorkSource Center that provides hands-on training and appropriate career-pathing.
6. Providers and training institutions should be required to report the number of workers trained, number of training completions, cost of training per worker, number and type of credentials and certificates awarded, number of trainees enrolled in state-certified apprenticeship programs, and number of job placements for trainees, including their wages and benefits, demographic and geographic profile, and retention rates for trainees placed in related employment.

7. CSD needs to be clear about how Providers will be held accountable for workforce development goals. Continuing contracts with CSD should be contingent on meeting defined workforce development goals, as well as quality of jobs provided, and monitoring of these goals should be built into existing Quality Assurance activities.
8. Use best value contracting to ensure good jobs with benefits. When using subcontractors, the projects should not just go to the lowest bidder but the ones who provide quality jobs and the best value for the community.

Quantification of Benefits and Co-Benefits

Consider these standards utilized in other programs:

1. Use the California Technical Forum's cost benefit analysis of standardized energy savings.
2. What standards will be used to assess and determine measures to be installed? Will a whole home approach be used to assess energy savings potential vs. cost? CSD should define a set of standards to guide the assessment and cost-benefit analysis (such as BPI standards) and require that individuals performing this assessment be certified (BPI Building Analyst certification, for example). Work should include a test-in and test-out to measure actual energy savings achieved.
3. Standards should be the same as those used by the Energy Upgrade California programs to ensure that low-income homes are getting the same level of quality with regard to health, safety, and efficiency. To ensure this can happen, more money should be allotted per home to cover the cost of whole home energy audits.

Project Types

These Ideas strengthen the program and expand reach into DAC:

1. We support CSD's requirement that "All homes receiving solar PV will be assessed for weatherization services to further reduce GHGs." All homes receiving LIWP services should first receive a whole home energy audit and retrofit before being assessed for solar to ensure that the maximum amount of energy savings is achieved and the appropriate sized solar system is installed.
2. Allow nonresidential buildings to be eligible for weatherization and solar, such as churches, community centers and small businesses.

Anti-Displacement Provisions

The proposed changes below will help ensure that projects funded by LIWP provide benefits to existing lower-income residents rather than result in their physical or economic displacement:

1. Provide additional points for Projects located in jurisdictions with policies or programs designed to prevent the displacement of lower-income residents and businesses of the project area and community. These policies shall be a threshold requirement for future funding rounds. [Note: We recognize not all Projects will be located in neighborhoods where lower-income residents face current or future risk of economic displacement, so exemptions for communities not facing displacement

risk can be made, including in many rural areas. Applicants may provide evidence for agency review demonstrating that there is no economic displacement risk for the next ten years in the project area and community or as a result of the Project.]

2. Target homes and units with affordability covenants extending at least 5 or 10 years from date of energy improvements, for the LIWP projects.

Lastly, we recommend you revisit LIWP guidelines in future years. While we are also interested in quickly putting LIWP funds to use, we will learn how to better benefit disadvantaged communities or address problems after the first and successive years of implementation. LIWP guidelines should be revisited next year with a robust public process to adopt amendments.

Thank you for your hard work and dedication to improving efficient and clean energy access for all Californians. We look forward to working with you during the development of these guidelines and program implementation, and are available to answer any questions you may have. Please contact Mari Rose Taruc at marirose@apen4ej.org if we can be of assistance.

Sincerely,

Mari Rose Taruc, State Organizing Director
Asian Pacific Environmental Network

Pastor Alfred Carrillo
Apostolic Faith Center

Leonard Robinson, Energy and Environment Committee Chair
California Black Chamber of Commerce

Strela Cervas, Co-Coordinator
California Environmental Justice Alliance

Susan Stephenson, Executive Director
California Interfaith Power & Light

Drew Wood, Executive Director
California Kids IAQ

Jesse N. Marquez, Executive Director
Coalition For A Safe Environment

Bill Magavern, Policy Director
Coalition for Clean Air

Ricardo Pulido, Executive Director
Community Dreams

Ann Rojas-Cheatham, Research and Training Director
Community Health for Asian Americans

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Environmental Defense Fund

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Stella Ursua, President/Interim Executive Director
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Green For All

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Liberty Hill Foundation

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Al Weinrub, Coordinator
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Allna Bokde, Executive Director
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Judith Bell, President
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Jodi Pincus, Executive Director
Rising Sun Energy Center

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SBCC Thrive LA

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Orson Aguilar, Executive Director
The Greenlining Institute

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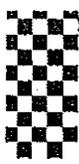
CC:

Senator Kevin De Leon

CalEPA Assistant Secretary for Environmental Justice Arsenio Mataka

Governor's Deputy Legislative Secretary Martha Guzman-Aceves

Governor's Senior Advisor Cliff Rechtschaffen



FAX COVER SHEET

TO	Crystal Alvarez
COMPANY	Program Analyst
FAX NUMBER	19162631406
FROM	Toya Lampley
DATE	2014-12-16 00:41:30 GMT
RE	CHPC/NRDC Comments on CSD draft LIWP guidance

COVER MESSAGE

Submitted by,

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BEFORE THE DEPARTMENT OF COMMUNITY SERVICES & DEVELOPMENT

**COMMENTS OF THE NATURAL RESOURCES DEFENSE
COUNCIL (NRDC) AND CALIFORNIA HOUSING PARTNERSHIP
CORPORATION (CHPC) ON DECEMBER 8, 2014 DRAFT LOW-INCOME
WEATHERIZATION PROGRAM GUIDELINES OF THE DEPARTMENT OF
COMMUNITY SERVICES & DEVELOPMENT**

December 15, 2014

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**COMMENTS OF THE NATURAL RESOURCES DEFENSE
COUNCIL (NRDC) AND CALIFORNIA HOUSING PARTNERSHIP
CORPORATION (CHPC) ON DECEMBER 8, 2014 DRAFT LOW-INCOME
WEATHERIZATION PROGRAM GUIDELINES OF THE DEPARTMENT OF
COMMUNITY SERVICES & DEVELOPMENT**

I. Introduction

The California Housing Partnership Corporation (CHPC) and the Natural Resources Defense Council (NRDC) respectfully submit these comments on the Department of Community Services and Development's (CSD) Draft Low-Income Weatherization Program Guidelines issued on December 1, 2014, and updated on December 8, 2014. NRDC is a non-profit membership organization with nearly 80,000 California members who have an interest in receiving affordable energy services while reducing the environmental impact of California's energy consumption. CHPC assists nonprofit and government housing agencies to create and preserve housing affordable to lower-income households, while providing leadership on housing preservation policy and funding.

II. Discussion

The Low-Income Weatherization Program (LIWP) will be critical to the state's implementation of its climate goals while producing co-benefits for disadvantaged communities. CHPC and NRDC support the draft guidance, which will improve the comfort, safety, and health of low-income residents' homes while also reducing energy consumption, greenhouse gas emissions, and other pollutants. We particularly support the guidance's goals to maximize greenhouse gas (GHG) emissions, train and hire residents from disadvantaged communities and increase economic investment in those communities, and to maximize dollar savings to low-income households served. However, we urge CSD to incorporate the following recommendations, described below, to more effectively align the guidance with the state's overarching clean energy and social goals.

In summary, our comments and recommendations include:

- We recommend CSD merge the small and large multifamily programs into one multifamily offering, or in the alternative, allow building owners whose properties don't clearly fall into either category to choose which program offers the best fit for their property.
- We recommend CSD streamline its income eligibility standards by using the 80% Average Median Income (AMI) standard for all participants.

- We recommend that if residents qualify for any low-income energy program in the state, and fall within the Cal Enviro Screen, that they also be eligible for CSD's LIWP program.
- We recommend that CSD coordinate closely between its energy efficiency and solar programs and require that participants in the solar program first install all available efficiency measures.
- We recommend energy education and behavior programs be added to the list of eligible LIWP weatherization measures.
- We recommend that any cost effectiveness test be applied at the portfolio level and not for each individual measure.
- We recommend that CSD and ARB work closely with the California Technical Forum when establishing savings estimates for the program.
- We recommend CSD ensure households it touches are at minimum brought up to the most recent Title 24 Building Energy Efficiency standards, and receive audits by qualified third-party raters before and after measure installations.
- We recommend that CSD maintain a transparent and open process, and solicit public stakeholder input before issuing any substantially modified guidelines.
- We recommend that the guidelines be an iterative process and revised every year, based on program experience gained.

A. We recommend the CSD merge the small and large multifamily programs into one multifamily offering, or in the alternative, allow building owners whose properties don't clearly fall into either category to choose which program offers the best fit for their property.

Outside of the traditional detached single-family home model there are a wide range of building types that do not fall easily into clear categories. We applaud CSD's efforts to make this division logical by incorporating building attributes in its categorization of multifamily properties, e.g. whether there are individual or central systems.¹ Unfortunately, this doesn't address all scenarios, especially in the case of buildings with a small number of units linked together on a larger property. There will be properties that have a mix of central and individual systems and in those cases we recommend allowing the building owner to choose whether they use the small multifamily dwelling program or the "large" multifamily dwelling program.

B. We recommend the CSD streamline its income eligibility standards by using the 80% Average Median Income (AMI) standard for all participants.

California is a diverse state and cost of living standards are not equal throughout its regions. Policies that attempt to serve the low-income populations of California should consider

¹ Draft Guidanco, p. 6.

these variations in order to reach the Californians that are most in need. The most common way to address this issue is to use Area Median Income (AMI), as is used by all federal and statewide affordable housing programs and the Single Family and Multi Family Affordable Solar Homes programs, administered by the California Public Utilities Commission (CPUC). The LIWP draft guidelines would use 80% of AMI for Solar Photovoltaic (PV) eligibility, but 60% of state median income for the efficiency program.² We instead strongly urge CSD to expand its solar eligibility of 80% AMI to serve as the standard for energy efficiency eligibility.

We understand there are cases where this would not allow LIWP to leverage LIHEAP funds, but do not think this should artificially constrain program eligibility for the LIWP program. First, we note there would still be opportunities to coordinate with the Energy Savings Assistance program, which offers incentives for health and safety benefits in addition to energy savings. Second, it is important that LIWP reach California's low-income populations, which would otherwise be hidden by income guidelines that do not account for regional variation if the state median income standard were used. Further, if the LIWP solar program eligibility uses 80% AMI, but the weatherization efficiency eligibility guidelines are kept at 60% State Median Income, a perverse incentive will result. Namely, areas with high costs of living could see solar installations that are not first accompanied by increasing the efficiency of the building, thereby violating the state's loading order.³

² Draft Guidance, p. 9.

³ "As stated in Energy Action Plan I and reiterated here, cost effective energy efficiency is the resource of first choice for meeting California's energy needs. Energy efficiency is the least cost, most reliable, and most environmentally-sensitive resource, and minimizes our contribution to climate change." CPUC/CEC, Energy Action Plan II, Implementation Roadmap for Energy Policies (October 2005). Available at: <http://docs.cpuc.ca.gov/published/REPORT/51604.htm>; "The electrical corporation shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible." Cal. Public Util. Code § 454.5(b)(9)(C); "Energy efficiency investments . . . help improve system wide reliability by reducing demand in times and areas of system congestion, and at the same time reduce all California electricity users' costs. These investments also significantly reduce environmental costs associated with California's electricity consumption, including, but not limited to, degradation of the state's air, water, and land resources." Cal. Public Util. Code § 399(c)(3).

C. We recommend that if residents qualify for any low-income energy program in the state, and fall within the Cal Enviro Screen, that they also be eligible for CSD's LIWP program.

As a means to streamline enrollment and maximize leveraging opportunities, we recommend making any California resident who (1) falls within a Cal Enviro Screen area, and (2) qualifies for any utility, federal, or state low-income energy efficiency program, be categorically eligible for LIWP.

D. We recommend that CSD coordinate closely between its energy efficiency and solar programs and require that participants in the solar program first install all available efficiency measures.

We commend CSD for requiring that all homes receiving solar PV also be assessed for weatherization services.⁴ However, we recommend CSD go one step further and require homes receiving solar PV systems to first install weatherization measures, in accordance with the state's loading order.⁵ As the majority of efficiency measures are more cost-effective than PV systems, this would prevent the PV system from being over-sized, allowing for more cost-effective distribution of funds.

E. We recommend energy education and behavior programs be added to the list of eligible LIWP weatherization measures.

Energy education and behavioral programs offer opportunities to save substantial amounts of energy at low-cost, (e.g. by recommending residents turn off unneeded lights, home office equipment, etc.). Both California's general efficiency and low-income efficiency programs, administered by the CPUC, offer these measures, which CSD could adopt, leverage, or modify as it sees fit.

⁴ Draft Guidance, p. 11.

⁵ "As stated in Energy Action Plan I and reiterated here, cost effective energy efficiency is the resource of first choice for meeting California's energy needs. Energy efficiency is the least cost, most reliable, and most environmentally-sensitive resource, and minimizes our contribution to climate change." CPUC/CEC, Energy Action Plan II, Implementation Roadmap for Energy Policies (October 2005). Available at: <http://docs.cpuc.ca.gov/published/REPORT/51604.htm>; "The electrical corporation shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible." Cal. Public Util. Code § 454.5(b)(9)(C); "Energy efficiency investments . . . help improve system wide reliability by reducing demand in times and areas of system congestion, and at the same time reduce all California electricity users' costs. These investments also significantly reduce environmental costs associated with California's electricity consumption, including, but not limited to, degradation of the state's air, water, and land resources." Cal. Public Util. Code § 399(c)(3).

F. We recommend that any cost effectiveness tests be applied at the portfolio level and not for each individual measure.

A portfolio-based approach to cost effectiveness offers several advantages over a measure-based framework. Assessing the cost-effectiveness of the entire program provides greater flexibility to program planners to pursue new strategies to capture additional energy savings. Providing ample flexibility will also enable the LIWP program to meet the diverse needs of its eligible population by tailoring program delivery and measures appropriate for each household. A portfolio-based approach is also consistent with the framework used by the Utilities to administer their core energy efficiency programs. Employing a similar framework will facilitate more effective leveraging and program integration while reducing administrative burden.

G. We recommend that CSD and ARB work closely with the California Technical Forum when establishing savings estimates for the program.

The draft guidance notes that CSD is currently working with the Air Resources Board (ARB) to identify methods for quantifying energy savings for LIWP measures.⁶ We recommend that CSD work closely with the California Technical Forum to ensure robust savings estimates are used that can be applicable across the state's weatherization programs. The California Technical Forum is a collaborative of experts who engage in a transparent, technically robust process to review and issue technical information related to California's demand side programs.⁷

H. We recommend CSD ensure households it touches are at minimum brought up to the most recent Title 24 Building Energy Efficiency standards, and receive audits by qualified third-party raters before and after measure installations.

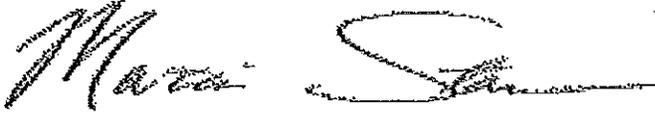
To ensure that any effort to retrofit or renovate an existing building uses a comprehensive, integrated approach to capture the full energy and water savings potential for each building, energy efficiency retrofit projects that receive LIWP funds must be designed to bring existing buildings up to the current Title 24 Building Energy Efficiency standards. We support CSD's listed measures, with the addition of energy education/behavior programs, as providing a good basis to provide comprehensive retrofits that, at minimum, bring existing buildings into code compliance. Utility programs could subsequently be leveraged to increase

⁶ Draft Guidance, p. 8.

⁷ For more information, see California Technical Forum, <http://www.caltf.org/what-we-do>.

Dated: December 15, 2014

Respectfully submitted,



Maria Stamas
Attorney and Policy Analyst, California Energy Program



Megan Kirkeby
Sustainable Housing Policy Manager, California Housing Partnership

TO: Department of Community Services and Development, 2839 Gateway Oaks Drive, Suite 100,
Sacramento, C 95833

FROM: Gordon Piper, 33 Hiller Drive, Oakland, CA 94618; (510) 843-3828

SUBJECT: Opposition to Low-Income Weatherization (LIWP) Draft Program Guidelines that Violate the Unruh Civil Rights Act, Government Code Section 11135 (a), California Administrative Code Title 22 Sections 9800-98413, the Equal Protection Clause in the California Constitution, and possibly Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause in the 14th Amendment to the United States Constitution

DATE: December 15, 2014 FAX #: 916-263-1406 Pages: 6

I am writing to urge the rejection of and the substantial modification of the Low-Income Weatherization (LIWP) Draft Program Guidelines. These draft Program Guidelines for the Low-Income Weatherization Program I believe are discriminatory and violate requirements of the Unruh Civil Rights Act, Government Code Section 11135 (a), California Administrative Code Title 22 Section 98000-98413, the Equal Protection Clauses in the California Constitution, and possibly Title VI of the Civil Rights Act of 1964 and the 14th Amendment to the United States Constitution if federal funds are used in the LIWP along with state funding. I worked for 31 years for the California Department of Fair Employment and Housing as an investigator, supervisor, and administrator, and have experience in investigating and enforcing state and federal civil rights laws.

By way of background, I have recently experienced discrimination first hand in a state-funded program funded by Greenhouse Gas Reduction Funds administered by the California Department of Forestry and Fire Protection (CAL FIRE) in the Green Trees for the Golden State Tree Planting Program that mandated that 100% of the funding would be allocated either in or directly benefiting disadvantaged communities identified by the California Environmental Protection Agency in CalEnviroScreen 2.0.

I found in my research regarding the LIWP proposed by California Department of Community Services and Development (CSD) that the State Department of Finance had similarly mandated that 100% of the funding for this state's \$75 million in LIWP would be utilized in just 25% of the census tracts identified in October 2014 by the CalEPA as "disadvantaged" communities, or in 1,993 of California's 8,000 census tracts. This approach in focusing all of the benefits of the \$75 million in funding for weatherization and solar PV in single-family, small multi-family and large multi-family dwellings on persons in a discriminatory manner that excludes persons in over 6,000 California census tracts, benefiting only persons in 29 of 58 California counties, while excluding many persons in 29 California counties with a total of approximately 23.93 million people.

This funding approach by CSD limiting 100% of the LIWP funding to 1,993 California census tracts would violate the requirements of the Unruh Civil Rights Act which prohibits arbitrary discrimination by public agencies in the provision of services, privileges and advantages on various bases such as color, race, national origin, ancestry and geographic location. I believe it would also violate the equal protection clause of the State Constitution.

It also may violate the provisions of Government Code Section 11135 (a) and implementing regulations in the California Code of Regulations Title 22 Sections 98211 (c) and 98100. Section 11135 (a) provides: "No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency is funded directly by the state, or receives any financial assistance from the state."

I believe a review by race of the breakdown of the population in the 1,993 census tracts that are benefited by the proposed LIWP Draft Program Guidelines versus the population in the over 6000 California census tracts that are not included will show that this approach adversely impacts based on considerations of color, race, national origin and ancestry, and that it benefits primarily Hispanics, African Americans, and other racial minorities in comparison to Caucasians or whites.

I found in my research regarding the Department of Finance's allocation of 100% of the CSD LIWP funding to disadvantaged communities that instead of following the guidance in Senate Bill 535 that mandated at least 25% of the moneys allocated from the Greenhouse Gas Reduction Fund that CSD was arbitrarily mandated to allocate 100% of the grant funding by the Department of Finance in the program to disadvantaged communities. On October 31, the Cal EPA came out with a definition of "disadvantaged communities" limiting this to only 25% of the 8000 California census tracts, or to approximately 1,993 census tracts out of the 8000 census tracts in California, which essentially redlines or excludes this funding for LIWP projects over 6000 census tracts.

I found in my online research regarding the census tracts that were included in the City of Oakland in the definition of "disadvantaged communities" by the California Environmental Protection Agency that only 24 of Oakland's 105 census tracts were included, and that 81 of the 105 census tracts or 77% of all Oakland census tracts in Oakland were not included in the "disadvantaged communities" including my census tract 4001. I believe based on my online research a review of the breakdown by color and race for the 1,993 California census tracts included in the Cal EPA definition of "disadvantaged communities" versus the over 6000 California census tracts that were excluded will show that there are some significant differences by color and race. I found in my online research that there were substantial differences by color and race in the composition of the 24 census tracts in Oakland that were included in the definition of "disadvantaged communities" by Cal EPA versus the 81 census tracts that were not included and that based on the insistence by CAL FIRE that 100% of the funding from the Green Trees Tree Planting Grant Program would go to project either in or benefiting defined "disadvantaged communities" by Cal EPA that this results in preferential treatment based on color and race by census tract location for persons in California.

For example, in my Oakland census tract 4001 I found in online research that 70.8% of the 2937 residents in the 2010 census were white and excluded from urban forestry project funding benefits versus only 25% of the persons that were white (19,076 out of 75,546) in the 24 census tracts in Oakland that were designated by CalEPA as disadvantaged communities and that were eligible for potential project benefits in the Green Trees for the Golden State Tree Planting Grant Program. Only 4% of the 2937 residents in my Oakland census tract 4001 were Hispanic that were denied potential project benefits versus 22% of the persons that were Hispanics (16,810 out of 75,546 total) in the 24 Oakland census tracts defined as disadvantaged communities by CalEPA that were Hispanic and eligible to potentially benefit from project funding in the Green Trees for the Golden State Tree Planting Grant Program. Only 4.8% of the residents in my Oakland census tract 4001 were African American that were denied potential project benefits versus 30% (22,340 out of 75,546) of the persons that were African Americans in the 24 Oakland census tract defined as disadvantaged communities and eligible to potentially benefit from

project funding in the Green Trees for the Golden State Tree Planting Grant Program. Significantly higher percentages of Hispanics and African Americans by race would likely benefit from limiting 100% of the CAL FIRE Green Trees grant funding for tree planting/maintenance to projects in the 2000 "disadvantaged community" census tracts than to Caucasians, and by color a significantly higher percentage of non-whites will benefit from limiting 100% of the CAL FIRE Green Trees grant funding for tree planting/maintenance to projects in the 2000 "disadvantaged community" census tracts than to whites. Cal EPA in an "Analysis of CalEnviroScreen 2.0 Scores and Race/Ethnicity" chart from August 2014 chart summarizing "Fraction of racial/ethnic groups living in one of the 20% most impacted census tracts" that you would find: 1 in 14 were white; 1 in 3 were Hispanic; 1 in 4 were African American; 1 in 7 were Native American; 1 in 8 were Asian/Pacific; and 1 in 9 were Other/multiple.

I believe that the information promised by Cal EPA's Arsenio Mataka summarizing "Fraction of racial/ethnic groups living in one of the 25% most impacted census tracts" will show somewhat similar breakdowns by race and color and that this will result in a much smaller percentage of whites benefiting from the benefits of project funding from the Green Trees for the Golden State Tree Planting Grant Program than Hispanics and African Americans and possibly for Native Americans, Asian/Pacific and Other/multiple. I sent an email on November 9 to Cal EPA's Arsenio Mataka, Assistance Secretary for Environmental Justice and Tribal Affairs, requesting that he provide me with a racial breakdown of the population for the 2000 California census tracts defined as "disadvantaged" versus the 6000 California census tracts that were essentially REDLINED by CSD for the proposed LIWP. I am still waiting for Cal EPA reps to send me the information I requested, which I believe will further document the discriminatory impacts based on color and race of the current approach of CSD limiting 100% of all the LIWP funding to disadvantaged communities or 2000 census tracts, while excluding persons in 6000 census tracts.

The insistence by CSD that 100% of the LIWP funding be used in disadvantaged communities violates the Unruh Civil Rights Act and constitutes arbitrary discrimination by a public agency in services, privileges or advantages. There are many low income persons in non-disadvantaged communities who potentially may be denied the benefits of this State funded program if the program is limited exclusively to eligible persons strictly in disadvantaged communities in 1,993 census tracts. In my online research, I also found that this arbitrary discrimination by CSD and the State also appeared to violate the provisions of California Government Code Section 11135 (a) cited above such as the indication that mandate (1) "No person in the State of California...shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency is funded directly by the state, or receives any financial assistance from the state" or (2) "No person in the State, on the basis of race, nation origin, ethnic group identification...color...be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."

On October 31, 2014 the Cal EPA came out with a definition of "disadvantaged communities" that would be utilized in the CalEnviroScreen 2.0 limiting this to 25% of the 8000 California census tract, or to 2000 out of the 8000 census tracts in California, which combined with CAL FIRE's insistence on 100% of the "Green Trees for the Golden State" Tree Planting Grant Program funding going to disadvantaged communities, which essentially excludes 100% of the persons residing in 6000 California census tracts from receiving any benefits and from equal access to the benefits of the Green Trees Tree Planting Grant Program in violation of Government Code Section 11135 (a) as well as violating the Unruh Civil Rights Act prohibition against arbitrary discrimination by a public agency in provision of services, privileges and advantages.

The 100% limitation on grant funding under the proposed LIWP program funded by State funds going to LIWP projects in 1993 California census tracts out of 8000 census essentially amounts to REDLINING of over 6000 California census tracts in violation of not only the Unruh Civil Rights Act, but also California Government Code Section 11135, and also I believe may violate (if Federal funds are utilized along with State funding in the LIWP) the requirements of Title VI of the Civil Rights Act of 1964 and Section 601 and 602 provisions of Title VI that forbid recipients of federal funds from utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin. The Cal EPA maps show the location of the 1,993 California census tracts that will benefit and the 6000 California census tract locations that will be excluded from receiving LIWP, and the REDLINING impacts not only my census tract in the Oakland hills but all of the Berkeley and Oakland hills, most of Oakland with the exception of 24 census tracts out of 105 Oakland census tracts that have predominantly non-white persons (75% of the 75,546 persons) non-white residents with 22% Hispanics and 30% African-American. Across the State of California the Cal EPA maps show huge areas where all persons in the 6000 excluded California census tracts which will be impacted because of their excluded from receiving any Green Trees for the Golden State Tree Planting Grant Program funding because of CAL Fire's violations of the provisions of the Unruh Rights Action (Civil Code 51) and Government Code section 11135 (a) provisions.

The equal protection clauses of the California Constitution and the 14th Amendment in the U.S. Constitution bar discrimination by government, but it is discouraging to see the CSD's LIWP proposing to discriminate potentially in utilizing \$75 million in State funds in a discriminatory manner.

I found on October 31 a press release was issued by CalEPA apparently with input from the Governor's office that indicated the Brown Administration considers the 25% set aside that is set forth in Senate Bill 535 passed in 2012 to be a minimum set aside and not the maximum set aside allowed, such as the 100% set aside for the CSD's LIWP for disadvantaged communities. It's almost appears like the 25% set-aside figure included in the Senate Bill 535 in 2012 for benefits going to disadvantaged communities and 10% set aside for Greenhouse Gas Reduction Fund project funding for projects in these disadvantaged communities was part of a "bait and switch" political manipulation that had State legislators approving much lower set aside limits for project benefits and locations that were subsequently replaced by much higher set asides such as the 100% allocation of urban forestry funding to 2000 census tracts defined as disadvantaged communities on October 31, 2014. I'm not sure that all of the elected California Legislators that approved the Senate Bill 535 would have voted for this legislation if they knew that subsequently the set-aside levels set forth in SB535 would be interpreted as "minimums" or a floor, and not as maximums or a ceiling that might be raised to exclude all persons in some of the 6000 census tracts that they represent from receiving any benefit or project funding based on CalEPA's definition of disadvantaged communities and the Brown Administration's view of the set aside figures in SB535 being just a "minimum" set aside level. There appears to be color, race, national origin and census tract "politics" or considerations now involved in interpreting the Senate Bill 535 legislation set-aside guidance in violation of many persons' rights to be free from discrimination in access to benefits in State funded or administered programs in 6000 census tracts. I believe there is evidence of race, color, and national origin discrimination that can be found and that is embodied in the discriminatory preferences and requirements in the CSD's LIWP that violate State and Federal laws, including the Unruh Civil Rights Act in California Civil Code 51 and California Government Code Section 11135 (a), California Administrative Code Title 22 Sections 9800-98413, the equal protection clauses of the California Constitution, and possibly Title VI of the Civil Rights Act of 1964 and the 14th Amendment of the U.S. Constitution (if Federal funds are being used in LIWP along with State funding).

There have previously been successful legal challenges brought in court cases and litigation involving affirmative action considerations in university/college admissions based on color and race, and in affirmative action requirements included in public contracting by government agencies at the local, State and Federal levels. The apparent modification of the set-aside levels set in Senate Bill 535 might potentially be subject to legal challenges if they are viewed or found to be similar in extending affirmative action preferences based in part on considerations of race and color. I was informed on November 17 by one CalEPA representative that at one point in the development of the CalEnviroScreen rating system that race or color considerations were included among the criteria taken into consideration, but these criteria were supposedly removed before the CalEnviroScreen 2.0 rating system was developed to help in defining disadvantaged communities. When higher percentages of set asides are established in the program funding for certain State funded programs in the Greenhouse Gas Reduction Fund such as the LIWP linked to arbitrary exclusion of persons in 6000 of the 8000 California census from funding consideration and project or program benefits, it appears that there are impacts related to race, color and national origin that may indicate that there is discrimination resulting and preferences, privileges and advantages being provided by public agencies that may violate provisions in State and Federal civil rights laws, such as the Unruh Civil Rights Act, California Government Code Section 11134 (a), Title VI of the Civil Rights Act of 1964 and Section 601 and 602 of Title VI that bar discrimination on the ground of race, color or national origin and that prohibit any persons being excluded from participation in or denied the benefits of any program receiving Federal financial assistance. The LIWP is a State funded program where there are prohibitions against discrimination and where there is supposed to be no denial of participation or benefits. There also is a potential issue beyond just the funding for the CSD's LIWP as to whether the Brown Administration or a State agency in the current round of grant funding or a future round of grant funding uses a higher set aside level than the those set forth in Senate Bill 535 as to whether this might also result in other programs with Greenhouse Gas Reduction Funds violating arbitrarily State or Federal civil rights laws or the Unruh Civil Rights Act and Government Code section 11135 (a) requirements related to race, color and national origin considerations.

I found in reviewing the Interim Guidance issued November 13, 2014 by the Air Resources Board of the California Environmental Protection Agency to State agencies administering the Greenhouse Gas Reduction Funds for programs that the Interim Guidance reads like a "How To" manual for discriminating in the use of the State funding that appears to encourage some State agencies to grant arbitrary preferences and advantages to projects in and/or directly benefiting disadvantaged community census tracts that are not afforded to other census tracts in California that are essentially redlined. This Guidance can lead to current and future violations of the Unruh Civil Rights Act violations by public agencies in the provision of services, privileges and advantages, and to potential violations of Government Code Section 11135 (a), California Administrative Code Title 22 (Sections 98000-98413), and of Title VI of the Civil Rights Act of 1964. I am concerned that the Interim Guidance from the Air Resources Board will lead to more violations of State and Federal Civil Rights laws by State agencies in 2015 and future years, unless the Interim Guidance is modified to help ensure compliance with State and Federal civil rights laws and regulations and the equal protection clauses in the State and U.S. Constitutions. The current Interim Guidance barely mentions some of the requirements in State and Federal civil rights laws and appears to be silent about the equal protection clause requirements in the State and U.S. Constitutions.

I am concerned there are other State programs funded by GGRF funds that may also arbitrarily discriminate in violation of the Unruh Civil Rights Act such as the \$75 million in funding being set aside for disadvantaged communities in the CSD Low Income Weatherization Program and the \$17.8 million set aside in CAL FIRE's Green Trees for the Golden State Tree Planting Grant Program. The Interim Guidance from the State Air Resources Board I believe encourages discrimination in other State administered programs by encouraging other State administering agencies to maximize benefits using different approaches for GGRF funded programs for disadvantaged communities while denying

participation or denying rights to the benefits of other State and/or Federally assisted programs to persons in many census tracts not identified as "disadvantaged" by CalEnviroScreen 2.0 and the Cal EPA.

The CSD should modify the proposed LIWP funded with GGRF funding to include percentages for disadvantaged communities that are much closer to the 10% level included in SB535 for disadvantaged communities. It should also reevaluate the requirements set forth in the draft guidelines in relation to the requirements for providers to ensure that the the requirements set forth in regard to "co-benefits" and the training and hiring of residents from disadvantaged communities are not administered in an arbitrary manner inconsistent with goals set forth in SB 535 for benefits to a disadvantaged community, such as the 25% figure included in SB535. It might help to have the revised draft guidelines developed with input from an organization such as the American Civil Liberties Union, the California Department of Fair Employment and Housing, the State Attorney General's Civil Rights Section, and the U.S. Department of Justice's section dealing with Title VI issues, that would help in ensuring the new guidelines take into consideration the requirements of State and Federal civil rights laws and regulations and the Equal Protection Clause provisions in the California Constitution and U.S. Constitution.



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EDMUND G. BROWN JR.
GOVERNOR

January 15, 2015

Mr. Gordon Piper
33 Hiller Drive
Oakland, CA 94618

Dear Mr. Piper:

Thank you for taking the time and effort to provide comments on the proposed guidelines for the Low-Income Weatherization Program (LIWP) to be administered by the Department of Community Services and Development (CSD). As you know, the LIWP is funded pursuant to the directive in Senate Bill (SB 535) that at least 25 percent of Greenhouse Gas Reduction Funds (GGRF) must be used for projects that provide a benefit to disadvantaged communities, and at least 10 percent of the funds must be allocated to projects actually located within these communities. For purposes of SB 535, the term "disadvantaged communities" refers to areas of California determined to be most disproportionately affected by environmental pollution and related health hazards, in addition to having the highest concentrations of poverty, unemployment, and other socioeconomic risk factors.¹

Your comments expressed concern about potential discriminatory effects that could result from allocation of 100 percent of the LIWP funds to benefit the disadvantaged communities identified by California Environmental Protection Agency through the CalEnviroScreen 2.0 scoring process.² As you noted, these disadvantaged communities comprise a relatively small portion of the total number of census tracts in California. However, they ranked in the highest percentile (75th and above) in the state for pollution impacts and poverty-related factors.

While many pollution and socioeconomic factors were considered, it is important to note that none of the criteria used in CalEnviroScreen 2.0 to identify disadvantaged communities are related to a protected status or class within the scope of state and

¹ Source: http://www.arb.ca.gov/cc/capandtrade/auctionproceeds/final_investment_plan.pdf

² A report and explanation of CalEnviroScreen 2.0 criteria included and scoring methodology is available at <http://www.oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf>.

federal civil rights and equal protection requirements.³ Geographic location is not a protected status within the scope of Civil Code §51 et seq. (Unruh Civil Rights Act),

Gov. Code §11135(a), or any other applicable state or federal civil rights provisions. Based on our legal staff's analysis of both the CalEnviroScreen 2.0 selection process and the LIWP guidelines requiring allocation of funds to the disadvantaged communities, the policies and procedures fully comply with any and all applicable civil rights statutes, regulations and Constitutional protections.

Race and ethnicity were not included in the CalEnviroScreen 2.0 scoring criteria. As your comments infer, however, communities with a high concentration of Hispanics/Latinos and/or African Americans *do* experience disproportionate impacts of pollution, environmental health hazards and poverty, while communities in which the population is predominantly white and more affluent tend to experience significantly fewer chronic impacts.⁴ The disparate impact of greenhouse gas pollution on low-income communities is a key part of the very problem that the SB 535 requirements and LIWP guidelines are intended to remedy.

Certainly no community in California is free of environmental concerns. Climate change, with its potentially devastating impacts, affects all census tracts. However, the state has a duty to allocate finite resources for maximum benefit in mitigating these impacts. The LIWP guidelines do not unlawfully discriminate or promote unlawful discrimination on the basis of any protected status, and were designed to carry out the intended purposes and goals of SB 535, namely to assist low-income communities most severely impacted by air pollution. Because no protected classes or recognized 'fundamental rights' are at issue in the program guidelines, the applicable test for constitutionality is whether the state program requirements are rationally related to a legitimate government interest. In this case, directing a portion of GGRF's to provide weatherization and energy efficiency services in communities most severely impacted by pollution and poverty is a rational, legitimate means to advance the state's goal of improving public health, quality of life and economic opportunity while reducing pollution that causes climate change.

Apart from the specific focus of LIWP, however, it is important to note that any household meeting the low income and high energy burden requirements for CSD's

³ The complete list of factors scored in CalEnviroScreen 2.0 and percentile scores for each census tract is available for review at <http://oehha.ca.gov/ej/ces2.html> (see link to Excel spreadsheet under the heading "CalEnviroScreen 2.0 Mapping Applications and Data").

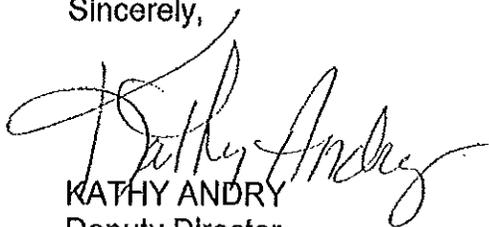
⁴ The correlation between race/ethnicity and environmental impacts in California is discussed in an August 2014 Office of Environmental Health Hazard Assessment report, "Analysis of CalEnviroScreen 2.0 Scores and Race/Ethnicity," available at: <http://oehha.ca.gov/ej/pdf/CES20FinalRaceEthnicity.pdf>. The federal EPA also released a lengthy report in 2010 on the disproportionate impact of environmental hazards on African-American and Hispanic/Latino communities, available at: <http://www.epa.gov/ncer/events/calendar/2010/mar17/abstracts/brender.pdf>.

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federally-funded programs, which include the Department of Health and Human Services Low-Income Home Energy Assistance Program and the Department of Energy Weatherization Assistance Program, are eligible to apply for assistance regardless of location.

Thank you again for your comments and participation in the LIWP public review process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Andry".

KATHY ANDRY
Deputy Director
Energy and Environmental Services Division