U.S. Department of Housing and Urban Development
Office of Public Housing
Los Angeles Field Office, Region IX
611 W. 6th Street, Suite 1040
Los Angeles, CA 90017

OCT 17 2008

Mr. Rick C. Gentry
President & Chief Executive Officer
San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101

Dear Mr. Gentry:

Subject: Acquisition and/or Production of 350 Low Income Units by SDHC

This is in response to your request for HUD to provide clarification and approval of the obligation and intent of the San Diego Housing Commission (SDHC) to develop, acquire and/or produce 350 low income units for eligible families, as a result of the disposition of 1366 low income public housing units in the City of San Diego. These units, per the reverter, are "defined as being affordable to and occupied by households earning 80% or less of the area median income for the San Diego Statistical Metropolitan Area, at initial occupancy and adjusted for household size from time to time by HUD or any successor thereto."

Your agency has provided 8 scenarios that the SDHC is considering to fulfill its obligation regarding the 350 low income units and has requested HUD to verify what proposals would meet HUD approval. Upon review of the information provided to our office by Kathy Szybist, Program Analyst, HUD Special Applications Center (SAC) and discussions with Marcall Insua, Attorney, Office of Counsel, Los Angeles, it appears all the scenarios below, #1-8, meet the definition of "acquisition and/or production" of the 350 low income units. However, our office believes that scenario #8 is not in the full spirit of the SDHC making a firm commitment to meet the obligation in question. Therefore, it is the opinion of the Los Angeles Office of Public Housing (LAOPH), that only scenarios #1-7 below are approvable by the LAOPH.

It is further understood that any method of ownership and/or development by SDHC to satisfy the covenant to "acquire and/or produce 350 additional low income units" will include maintaining such units as low income housing for a minimum period of 55 years.

The scenarios provided by the SDHC and aforementioned are as follows:

1. If SDHC were to buy multi-family developments and/or single family homes and hold fee simple title in its name and operate these new rental units for and as low income housing for families with income not exceeding 80% of median area income at initial occupancy for 55 years, the Commission believes that this action would, obviously, satisfy the requirement of "acquiring" units.

2. If the Commission were to construct new multi-family units on property owned by it, provided that the units are low income units (affordable at 80% AMI or less at initial occupancy), and, further provided, that they are maintained as low income units for a period of 55 years that would also satisfy the requirement of "producing" units.

SDHC is also seeking verification that the following forms of project involvement and/or ownership and/or development, listed as paragraphs 3 through 7, below, will also qualify as either "acquisition and/or production" of the low income units:

3. The SDHC would purchase real property ("the ground") and then lease that ground to a developer for construction of low income multi-family housing, affordable to and occupied by persons and/or households at or below 80% of area median income at initial occupancy. Under this scenario, the term of the ground lease would be the shorter of the term of the permanent financing for the project or 55 years. At the end of the lease term, the SDHC would own both the land and the buildings and would, if it became an owner before the end of the 55 year afford ability restriction, continue to operate the project as a low income (80% AMI or less at initial occupancy) project for the balance of the 55 year term.

In this proposal no federal tax credits are assumed in the project, but other traditional sources for the development of the project such as HOME funds, traditional bank financing, bond financing may be involved. Upon an early default by the developer, SDHC could and would terminate the ground lease and become the owner of the entire project, including the buildings, and continue to operate the project as low income housing for the balance of the 55 year period, as required by the approval of the disposition. In the event of such default, SDHC would assume the project debt as part of termination of the lease and perfect its security interests in the project. The Commission believes that this scenario would meet the definition of "acquire and produce" contained within the reverter.

4. Same as 3 above (except that tax credits are involved in the financing of the deal). In this case, at the end of 15 year tax credit period the ownership of the multi-family housing buildings will be acquired by the Commission. This would be done under an option and/or first right of refusal that would be granted to the Commission at the inception of the project, so that the entire fee simple interest in the property and buildings would be owned by the Commission at the end of the 15 year period. SDHC would continue to operate and maintain the project for the balance of the 55 year term as low income housing.

5. Same as 3 above except that the Commission would be a general and/or a limited partner of a tax credit limited partnership and it would have the right at the end of the 15 year tax credit period to acquire all of the limited partnership

interests in the multi-family property/project/partnership and assume complete control of the project as the general partner and as owner of all limited partnership interests. SDHC would continue to own and operate the project as low income housing for the balance of the 55 year term of affordability restrictions recorded against the property (this is simply an alternate legal method for accomplishing the same goal as set forth in 3 above).

6. The SDHC would acquire multi-family housing to be restricted for a minimum of 55 years at levels at or below 80% area median income at initial occupancy through related entities. These related entities would be completely owned and controlled by the San Diego Housing Commission. These entities could include limited partnerships and/or limited liability companies that are single asset bankruptcy remote entities

7. The Housing Commission would acquire single family properties, and rent to families earning 80% or less of median area income at initial occupancy for 55 years and/or sell and/or finance the sale of properties to families earning 80% or less of median area income at initial occupancy and restrict occupancy to same for 55 years.

8. The Commission could fund a construction/permanent loan to the developer of multi-family housing with affordability restrictions at or below 80% at initial occupancy area median income on the project for a term of 55 years.

We appreciate your willingness to move forward on this matter in an expeditious manner. If you have any additional questions, please contact Mr. Sebastian King, Public Housing Revitalization Specialist at (213) 534-2607.

Sincerely,

K.J. Brockington
HUB Director
Office of Public Housing