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Section 8 Housing Choice Voucher Program tenancies are not exempted from the protections of AB 1482.

The plain language of the law indicates that a landlord's participation in the Housing Choice Voucher (HCV) program does not exempt units for which HCV funds are received from the protections of AB 1482.

AB 1482 exempts certain types of affordable housing from its protections regarding rent gouging and evictions for cause. The law describes the exempted housing in provisions 1946.2(e)(9) and 1947.12(d)(1) as:

Housing restricted by deed, regulatory restriction contained in an agreement with a government agency, or other recorded document as affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code, or subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.

The first type of housing referenced in this provision refers to affordable housing that is restricted by a deed, regulatory agreement contained in an agreement with a government agency, or other recorded documents. The most common types of affordable housing subject to a recorded document include the low-income housing tax credit program, which requires a recorded regulatory agreement memorializing affordability restrictions, and public housing, which requires deeds with restrictive language. This definition does not fit the Section 8 Housing Choice Voucher (HCV) program, as the HCV program does not require the recording of any type of deed or regulatory document.

The second part of the provision refers to housing “*subject to an agreement that provides housing subsidies for affordable housing for persons and families of very low, low, or moderate income, as defined in Section 50093 of the Health and Safety Code or comparable federal statutes.*” This language, particularly the words “housing subsidies for affordable housing,” more closely mirrors the structure of the Project-Based Section 8 (“PBS8”) and Project-Based Voucher (“PBV”) programs. These programs involve agreements which provide funds to housing providers to rent specific apartments and other housing units at affordable rates, but do not require deed restrictions or other recorded documents. The affordability restrictions in PBS8 and PBV buildings are tied to specific units, allowing any tenants that reside in those units to pay rent set at 30% of their income, so long as those tenants meet program requirements and remain in the unit.

The HCV program involves an agreement, known as the Housing Assistance Payment contract, between the housing provider and the public housing authority (PHA). However, the Housing Assistance Payment (“HAP”) contract is distinct from the type of “agreement that provides housing subsidies for affordable housing” which may exempt a

given rental unit from the protections of AB 1482. The HAP contract governs the landlord's participation in the HCV program and provides that the PHA will pay the difference between the tenant's portion of the rent and the total "rent to owner" for the unit.

While it is true that the HAP Contract required for a landlord to receive HCV funds is an "agreement" between the Public Housing Authority (PHA) and the landlord, that agreement is not an agreement that provides for a subsidy to the landlord for "affordable housing." Unlike with the PBS8 and PBV programs, a landlord entering into a HAP agreement under the HCV program is not agreeing to provide below market rate rents and receive a subsidy in exchange for doing so. Rather, the landlord is agreeing to rent the unit to the HCV recipient at a market rent determined by the landlord—the same rent that would be charged to a tenant without a HCV. The HAP contract obligates the landlord to receive a payment from the PHA on behalf of the tenant to pay a portion of the unsubsidized market rent. Thus, the agreement is not an agreement providing for "affordable housing," since the rent charged by the landlord is not affordable to the HCV holder.

Moreover, the HAP contract does not involve a subsidy. In essence, it involves an agreement to receive the full market rental payment from two sources, one portion from the tenant and one portion from the PHA. This is not a "subsidy" as that term is commonly used or understood. The commonly understood meaning of that term is a government payment to a private party to compensate that party for offering something at a price below market.¹ However, that is not what occurs under the HCV program. A landlord who receives HCV payments is not agreeing to provide the unit at a below market price in exchange for a subsidy from the government, but rather charges market rent for that unit, which is paid in full by the tenant and PHA. Indeed, the HAP contract itself supports this interpretation. Under the HAP contract, the total rent charged by the owner must be comparable to area market rents, and must also be in line with "rents charged by the owner for rental of comparable unassisted units in the premises." Therefore, the HAP contract does not render the unit itself more affordable than other units in the area or other units rented by the owner, and is distinct from a traditional "subsidy for affordable housing" in this regard.

Moreover, HCV assistance is tenant-based and does not attach to a specific unit of housing. Instead, the assistance attaches to a tenant and the vouchers allow tenants to afford market rate rents by combining their rent portion with the portion paid by the Housing Authority. In contrast to the PBV/PBS8 programs, when a tenant receiving HCV assistance leaves, the the assistance does not remain with the unit and the following tenant is responsible for ensuring payment of the full market rent. Therefore, the exemption in AB 1482 for units subject to "an agreement that provides subsidies for affordable housing" does not include unsubsidized units where a tenant uses their HCV assistance to pay the rent.

¹ See e.g. Macmillian Dictionary: "an amount of money that the government or another organization pays to help to reduce the cost of a product or service."

Interpreting AB 1482's language in the context of related statutes and regulations also demonstrates that the exemption provision is not referring to the HCV program.

An examination of the language used in the HCV program's implementing regulations also demonstrates that the exemption provision does not refer to the HCV program. First, in contrast to the language in 1482, the HCV regulations consistently refer to the assistance provided as "tenant-based" See 24 C.F.R. § 982 et. seq. Furthermore, the HCV statutes and regulations refer to the payments made to landlords as "rent," not the "subsidies" referred to in AB 1482. This is because HCV landlords are receiving rent in exchange for market rate, not affordable, housing. 24 C.F.R. § 982.

Additionally, the language used to describe the HCV program in other California statutes and regulations bears no relation to the language utilized in 1482. This comparison is important, as the courts have recognized that it is proper to consider related statutory or regulatory framework when interpreting the language and meaning of a statute:

"A statute is not to be read in isolation... it must be construed with related statutes and considered in the context of the statutory framework as a whole. *Altaville Drug Store, Inc. v. Employment Development Department*, 44 Cal.3d 231, 236, (1988); *Hicks v. E.T. Legg & Associates*, 89 Cal.App.4th 496 (2001). As statutes "in pari material," meaning "of the same matter" or "on the same matter" they must be interpreted together. *Donovan v. Poway Unified School Dist.*, 167 Cal.App.4th 567 (2008).

SB 329 recently amended provisions of California's Fair Employment and Housing Act to prohibit discrimination against tenants because they are utilizing Section 8 Housing Choice Vouchers. Cal. Govt. Code §§ 12955, 12927. The amendments to the law describe the HCV program as "federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f)." In other laws, the legislature describes the HCF program explicitly as "housing choice vouchers" (25 CCR § 8305 (b)(3)) or a "federal government program that provides for rent limitations or rental assistance to a qualified tenant" CCP § 1161.4(f).

If the California legislature intended to refer to the HCV program in AB 1482's exemption provisions, it would have described the program utilizing terms such as "tenant-based assistance," "federal housing assistance vouchers," "housing choice vouchers," or similar language. The absence of such language, especially in the context of the federal and state statutory and regulatory framework, clearly illustrates that this provision is not intended by the legislature to refer to a landlord's acceptance of HCV funds.

AB 1482's legislative history also indicates that the law does not exempt the HCV program.

Finally, the legislative history of AB 1482 indicates that the law was not intended to exempt the HCV program. The courts have recognized that a "legislative staff analysis

may be relevant to ascertaining legislative intent when the analysis is consistent with a reasonable interpretation of the enactment. “ *Pacific Bell v. California State & Consumer Services Agency*, 225 Cal.App.3d 107 (1990); *In re Rottanak K.*, 37 Cal.App.4th 260, 267 (1995).

None of the legislative analyses of AB 1482 make any mention of the HCV program or indicate in any way an intent to exempt the program from the law. (See 5/10/19 Assembly Floor Analysis; 7/8/19 Senate Judiciary Analysis; 9/9/19 Senate Floor Analysis; 9/10/19 Assembly Floor Analysis). In 2018, 301,100 households were using housing choice vouchers in the state of California. (See Center on Budget and Policy Priorities, California Federal Rental Assistance Fact Sheets, <https://www.cbpp.org/research/housing/federal-rental-assistance-fact-sheets#CA>). In light of the sheer size and breadth of this program, it is unlikely that an intent to exempt the program from the protections of AB 1482 would go unmentioned in the legislative analysis. Therefore, the legislative intent clearly indicates that AB 1482 does not exempt the HCV program from its protections.